

Volume 21

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MAXINE M. CHESNEY, JUDGE

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)
MARYLON BOYD, individually)
and as Executor of the Estate)
of CAMMERIN BOYD, deceased,)
et al.,)

Plaintiffs,)

v.)

No. C 04-5459 (MMC)

)
CITY AND COUNTY OF)
SAN FRANCISCO, et al.,)

Defendants.)

San Francisco, California

Tuesday, September 18, 2007

TRANSCRIPT OF PROCEEDINGSAPPEARANCES:

For Plaintiffs: DALE K. GALIPO
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BY: BLAKE P. LOEBS
SCOTT WIENER
ERIN BERNSTEIN

1 Tuesday, September 18, 2007

2 (9:00 a.m.)

3 (In open court; jury not present)

4 DEPUTY CLERK: Please come to order.

5 THE COURT: Should we have Mr. Jason get back on the
6 stand?

7 Let's call the jury in.

8 MR. WIENER: Your Honor, the revised instructions are
9 down there.

10 THE COURT: On Miss Lucero's desk?

11 MR. WIENER: Yes.

12 THE COURT: Okay.

13 (Off the record)

14 (The jury entered the courtroom)

15 THE COURT: Good morning, ladies and gentlemen.
16 Please be seated. Mr. Jason's cross-examination will be
17 continuing this morning.

18 And the witness remains under oath.

19 After Mr. Jason, I think we may have some readings,
20 I'm not sure, of two witnesses, and then there'll be another
21 witness immediately after. So we're trying to move right along
22 as best we can.

23 Okay. And we also did some more work regarding
24 instructions yesterday afternoon after you left. So we're not
25 losing that time.

1 Okay. Mr. Galipo, you're on.

2 MR. GALIPO: Thank you.

3 CROSS EXAMINATION (cont'd)

4 BY MR. GALIPO:

5 Q. Good morning, Mr. Jason.

6 A. Good morning.

7 Q. Regarding the trajectory analysis, first of all, you would
8 agree that the shooter would have to be in a position in order
9 to be able to visualize the areas of contact on Mr. Boyd's
10 body?

11 A. Well, not all the areas.

12 Q. Well, at least the entrance wounds?

13 A. Yes. The abdominal wound and the thigh wound, yes.

14 Q. And you also agree that if one was to -- strike that.

15 For purposes of your analysis, you followed the
16 trajectories within the body as described by Dr. Smith. Is
17 that fair?

18 A. Did I follow it?

19 Q. You accepted them as true?

20 A. Yes.

21 Q. And if one -- and those trajectories within the body were
22 on a straight line within the body. There was no ricochet off
23 bone or anything like that?

24 A. Oh, I see what you mean. Yes. That's correct.

25 Q. So if one was to follow, for example, the trajectory from

Jason - Cross

1 the entrance wound on the abdomen to its resting place and had
2 a straight line between those two points, if that straight line
3 was then extended on the right side of the body, that would
4 show the trajectory of the bullet as it approached the body; is
5 that correct?

6 A. Yes.

7 Q. And if one was to extend out, for example, that trajectory,
8 you would agree that based on our discussion yesterday, that
9 that trajectory could not -- first of all, obviously it
10 couldn't go into the door, correct?

11 MR. LOEBS: I object to the question in terms of based
12 on our discussion yesterday as being argumentative.

13 MR. GALIPO: I'll take that out of the question, if
14 necessary.

15 THE COURT: I'm not sure I understand the nature of
16 the objection.

17 MR. LOEBS: Argumentative in terms of whether it's his
18 opinion or based on discussions yesterday as opposed to
19 opinions he's reached in this case.

20 THE COURT: I'll overrule. Go ahead.

21 A. Are you asking if the door could not conflict with an
22 incoming trajectory to the body, is that -- does that answer
23 your question?

24 Q. Yes. And also the extension of the door. If one was to
25 draw a line from the right side, the trajectory out, that

Jason - Cross

1 couldn't conflict with the extension of the door if someone was
2 to draw an imaginary line extending the door?

3 A. Yeah, I think one of your earlier questions you asked would
4 the entrance sites for both the thigh wound and the side wound
5 would have to be exposed to the shooter, would be visible
6 essentially to the shooter.

7 Q. Okay. If -- do you think, Mr. Jason, if I gave you this
8 ruler, you could in general show me the trajectory that the
9 bullet to the abdomen would have had to take as it approached
10 the abdomen, given the trajectory in the body?

11 MR. LOEBS: Object to the question as being vague and
12 ambiguous; an incomplete hypothetical; calls for speculation;
13 lack of foundation.

14 THE COURT: I'll overrule. The witness can indicate
15 whether he can or cannot extend that out in some way in
16 Mr. Galipo's body.

17 Q. Would you be able to do that, Mr. Jason?

18 A. I think so.

19 Q. Okay. You often see in cases with trajectory analysis that
20 you've seen before where they have a mannequin where there's
21 rods placed that are sticking out of the mannequin showing the
22 trajectory, correct?

23 A. Yes. And that's like the graphic that I made represents
24 that.

25 MR. GALIPO: May I step down to the side and have the

Jason - Cross

1 witness --

2 THE COURT: You don't want him to put it through your
3 body.

4 MR. GALIPO: No, I'd prefer not.

5 THE COURT: All right. Okay. Well, yes, if you could
6 do that, Mr. Jason.

7 MR. GALIPO: If you'll stand to my right side since
8 the wound is on my right side.

9 THE COURT: I think you may have to stand in front, as
10 Mr. Kubo is indicating, so that neither of you is between the
11 jurors and the demonstration.

12 BY MR. GALIPO:

13 Q. Okay. So why don't you do it and explain what you're doing
14 as you do it.

15 A. The entrance wound is --

16 Q. That's okay you can touch. I'll put my hand behind my
17 back.

18 A. It's between the 9th and 10th rib, and, of course, you have
19 a different dimension than the decedent, but somewhere like
20 around here, and a component of the direction of the wound path
21 is relative to the body, downward, and front to back. Which
22 means it's going across his body, not just this way, but into
23 his body that way (indicating), so I can only indicate really
24 one of those components. And about a 10 to 15-degree angle in
25 the body is something like this. It comes in through the two

Jason - Cross

1 ribs and then goes through the body, and it stops in the left
2 external oblique muscle, which is somewhere -- if it came in
3 here, it stopped or ended up over here, something like that.

4 Q. On the left side?

5 A. Yes.

6 Q. And, by the way, you did have a chance to look at the x-ray
7 of where the projectile came to rest, correct?

8 A. I did.

9 Q. And in your recollection it was at about the height of the
10 belly button?

11 A. Well, the belly button doesn't show up on the x-rays, so I
12 don't know.

13 Q. Do you recall giving prior deposition testimony that it was
14 at the height of the belly button?

15 MR. LOEBS: Objection, improper use of prior
16 deposition testimony.

17 THE COURT: I'll overrule, but I'll ask Mr. Jason to
18 come back to the stand. If you're through with your
19 demonstration.

20 MR. GALIPO: There's one more point.

21 THE COURT: You can't be cross-examining him down
22 there while you're doing that.

23 MR. GALIPO: I'll conclude the examination.

24 Q. What I'm looking for, Mr. Jason, is if one was to extend
25 out this as the trajectory, a generalization, how would the

Jason - Cross

1 bullet have to come?

2 A. Something like that (indicating).

3 Q. Okay. That would be the extension out, the bullet would
4 have to come at this angle?

5 A. Yes, that's generally the angle.

6 MR. GALIPO: Okay. Indicating he's extending out from
7 my right side, your Honor?

8 THE COURT: Yes.

9 MR. GALIPO: Thank you, Mr. Jason.

10 Q. Now given that, would you agree, Mr. Jason, that if
11 somebody was seated on the floorboard in the area between the
12 front of the seat and the door, their body could not be in a
13 position so that the yardstick, as we saw it extended, would be
14 going into the door?

15 A. Well, the door could not be in the way, I think I can say
16 it that way.

17 Q. Well, another way to say it is, just for visual purposes,
18 the yardstick could not have been going towards or into the
19 door?

20 A. It could not conflict with the -- the trajectory could not
21 conflict with the door.

22 Q. And also the yardstick could not, if the body was angled,
23 conflict with a linear extension of the door, correct?

24 A. Well, I'm not sure. I think my answer is sufficient, that
25 the door couldn't be in the way. I agree with you, if that's

Jason - Cross

1 what you're asking me.

2 Q. The other point I'm getting at is, if -- yesterday we did
3 some linear extensions of the door and we talked about that the
4 shooter would have to be on, I think it was the west side of
5 that line, correct?

6 A. On one side of the line, yes.

7 Q. And so you would agree that if one was to extend out the
8 yardstick in the example we did, that yardstick could not cross
9 that line, even if it was -- even if the line was an extension
10 of the door?

11 MR. LOEBS: I object as vague and ambiguous as to what
12 line, what hypothetical.

13 THE COURT: I'll sustain. Are you just asking him
14 whether somebody can't be on the side of the door since the
15 bullet didn't go through it?

16 MR. GALIPO: Not exactly, your Honor.

17 THE COURT: Okay.

18 Okay, which exhibit is up on the easel?

19 MR. GALIPO: Your Honor, this is V5-02.

20 THE COURT: V5-02.

21 MR. GALIPO: Yes, your Honor.

22 THE COURT: Okay.

23 BY MR. GALIPO:

24 Q. Now, this is the --

25 MR. LOEBS: Your Honor, I can't see it.

Jason - Cross

1 THE COURT: Well, Mr. Loeb --

2 MR. LOEBS: I don't know how to position myself, if I
3 can.

4 THE COURT: One of the problems is if you stand in
5 front of it, Mr. Galipo, it will be hard for anybody to see it.
6 It can be angled a little bit maybe just -- well, I was going
7 to say the other way perhaps so that you could get away from it
8 a bit.

9 Can the jurors see that, though, if it's angled that
10 way? That's fine. Okay. Go ahead.

11 MR. GALIPO: Okay.

12 THE COURT: If necessary, Mr. Loeb will have to move
13 out of where he usually sits for a moment or two.

14 MR. LOEBS: I don't mind that.

15 BY MR. GALIPO:

16 Q. First of all, the angle of the door in this depiction,
17 V5-02, is different from the angle of the door in the
18 Exhibit 184 we looked at yesterday. Is that correct?

19 A. That's correct.

20 Q. Okay. Now, whatever the angle of the door is, in this
21 picture it -- obviously if you follow it with the yardstick to
22 the top, one can see where it would be. If it was angled
23 towards the separation between the two lines, it would have a
24 different projection.

25 But my question is: Would you agree that the

Jason - Cross

1 trajectory as you showed with the yardstick on my right side
2 could not, if one was to continue to extend the yardstick,
3 could not cross wherever that line was?

4 MR. LOEBS: Objection, vague.

5 THE COURT: Overruled.

6 A. I'm not really sure what you're saying. I think you're
7 saying the door, you're asking me if the door -- the door had
8 to be clear of the trajectory. And I agree with that.

9 Q. Right. And "clear of the trajectory" means not only clear
10 in the area of the door, but it has to be clear in the
11 extension of the door, correct? Because if you're going to hit
12 the spot where you have the person sitting, and there's no
13 bullet defects in the door, then it would have to be clear of
14 the extension of the door?

15 A. Well, I really don't understand what you're asking me about
16 the extension of the door. The door cannot be in the way of
17 the bullet trajectory at the time of the shooting.

18 Q. Right. Which would mean that if one was to draw a line
19 between the muzzle of the gun of the shooter and the entry
20 point on the right side, that line could not cross the extended
21 line of the door. Is that correct?

22 A. I don't think I agree with you, from my understanding. But
23 I've said the door cannot be in the way. I don't know....

24 Q. Okay. Now, I want to show you what you've depicted as U-5.
25 First of all, in looking at this, Mr. Jason, and showing the

Jason - Cross

1 entry point that you just showed on my body, do you believe
2 this yellow dot accurately reflects the entry point on -- of
3 the wound on Mr. Boyd?

4 A. Generally, yes, it does.

5 Q. Well, when you say "generally," would you agree it's too
6 low?

7 A. No.

8 Q. And do you think the second yellow dot accurately reflects
9 an entry point of an inch or two above the kneecap?

10 A. I think it accurately reflects the general location of the
11 entry in the decedent's left thigh.

12 Q. Okay. Now, the trajectory, wherever that point is, would
13 be as you showed on my body with the yardstick on my right
14 side. Correct?

15 A. Yes.

16 Q. So if you went up to this model and took that yardstick and
17 did the same trajectory on his right side, if that yardstick
18 went into the door, the trajectory would not work; isn't that
19 true?

20 MR. LOEBS: Objection, vague; incomplete hypothetical.

21 THE COURT: I'll overrule. I think that's
22 understandable.

23 A. If the trajectory -- well, as looking at this picture the
24 way it is now, someone standing where the photographer is, from
25 the point of view of the photographer, could shoot somebody

Jason - Cross

1 without any conflict with the door.

2 Q. But you also have to account for the trajectory across the
3 body, correct?

4 A. Yes.

5 Q. Okay. So if you went up to this model the same way that
6 you went up to me and put a yardstick out his right side
7 showing the trajectory of the bullet within the body, that
8 yardstick could not hit the door in order for the trajectory to
9 work, correct?

10 A. Yes. Yes, generally, yes.

11 Q. Wouldn't you agree, Mr. Jason, that this person's body is
12 not turned enough in order for the yardstick, if it was
13 attached to the right side, not to hit that door?

14 A. Well, first of all, this isn't a picture of the actual
15 event. This is just an example of an experiment where someone
16 sat in a car and showing the right side and showing the inner
17 part and the top part of the left thigh; so it's exposed to a
18 shooter while the door is open and someone's seated there.
19 That's really the point of this. This isn't an exact replica
20 of the event.

21 Q. Exact replica aside, would you agree the trajectories could
22 not work as the person in this picture is positioned?

23 A. No, I don't agree.

24 Q. You think the way this person is positioned in this
25 picture, if you took a yardstick and extended it out his right

Jason - Cross

1 side, how you did with me before the jury, that yardstick would
2 not hit the door?

3 A. That's correct.

4 Q. And you think it would end up on the left side of the
5 person as pictured here and not in the middle of their back?

6 A. Yes, I positioned that person there.

7 Q. Let me ask you a few more questions about this, and I'll
8 move on.

9 If one was to see the trajectory of the leg shot in
10 this picture, one was -- assuming you had the marking in the
11 right place, one would conclude, in general, linearly, the
12 entrance wound to the area of the exit and then where it hit
13 the left hand?

14 MR. LOEBS: Your Honor, object to Mr. Galipo's use of
15 the yardstick pointing up, which is not part of his question,
16 and it gives a false impression as to the question he's asking
17 the witness.

18 THE COURT: Independent of wherever the yardstick was
19 held.

20 MR. GALIPO: Right. I'm not trying to -- however, it
21 would, if you want to put it down, that's fine. I'm only going
22 with the angle of the picture. However --

23 MR. LOEBS: Your Honor, object to Mr. Galipo's
24 representation.

25 THE COURT: I think you might have to ask him, when

Jason - Cross

1 you're checking the dots, so to speak, is that the correct
2 angle.

3 BY MR. GALIPO:

4 Q. When you're connecting the dots, is that the correct angle
5 with the leg shot?

6 A. It's generally the -- it's generally correct to the wound
7 path, yes.

8 Q. So if one was to extend out from the point of entry that
9 you have wherever that line goes, then you would have the
10 extended trajectory of that shot, correct?

11 MR. LOEBS: Same objection as to Mr. Galipo's use of
12 the ruler again pointing up as opposed to the direction the
13 witness has indicated.

14 THE COURT: I'll sustain. Because you're suggestion
15 is that that is the angle, and I don't think the witness has
16 acknowledged that the angle you used was the correct one that
17 crosses the door.

18 Q. Would you agree, whatever the extension of that line would
19 be, would be the trajectory as it approached the leg?

20 A. Well, the extension of the wound path as indicated in that
21 picture would come essentially straight at me. Is that what
22 you're asking? It wouldn't hit the door.

23 Q. It would come straight at you?

24 A. Yes, essentially straight.

25 Q. Which my next point is, and if you extended out the

Jason - Cross

1 trajectory from the right side, it would go to a different
2 place, correct?

3 A. No, it would also go to me.

4 Q. So you think if one was to take a yardstick and extend out
5 the right side, as you did in the example with me, that would
6 go to you, where you are on the witness stand?

7 A. Yes. That's how I designed this. That's how I set this
8 up, to illustrate this, that the right side is exposed to a
9 shooter, and the left leg is exposed to a shooter. And those
10 are general. That's not the same person. That's a similar
11 person. I think it's fairly accurate. I think it's
12 substantially similar to what could have happened there.

13 Q. Okay. With reference to the first shot, how high are you
14 assuming the muzzle was?

15 A. Relative to the street, 57 inches, or --

16 MR. LOEBS: Object to the question as asking for an
17 assumption as opposed to Mr. Jason's findings. And it's
18 argumentative.

19 THE COURT: I'm not sure if I heard exactly -- just a
20 second.

21 MR. GALIPO: I can reask the question.

22 THE COURT: It was how high is he assuming the muzzle
23 was?

24 MR. GALIPO: Correct.

25 THE COURT: All right. Are you objecting he didn't

Jason - Cross

1 make an assumption at all?

2 MR. LOEBS: That he made a finding.

3 THE COURT: Well, I'll overrule. The witness is
4 capable of saying he didn't make any assumption if he did not.

5 THE WITNESS: I measured Officer Paine's shooting
6 height. And I determined that to be 51 inches from the ground.
7 If he's on the sidewalk, that's 6 inches higher than the
8 surface of the street. So 57 inches above the surface of the
9 street.

10 BY MR. GALIPO:

11 Q. Okay. You measured Officer Paine to be five foot 11 and
12 three-quarters. Is that correct?

13 A. Yes.

14 Q. And you in fact made four measurements. At an erect
15 position, you measured 65 inches. Is that correct?

16 A. You're talking about muzzle height?

17 Q. From the muzzle height, you measured 65 inches?

18 A. Let me look at my notes on that and I'll tell you.

19 Q. I have a copy of your handwritten, if that will help.

20 A. Okay. Thank you.

21 Q. You're welcome. Showing you a copy of your notes, can you
22 tell me what your measurement was -- first of all, does that
23 confirm that your measurement of Officer Paine was 5-11 3/4?

24 A. Yes, it does.

25 Q. And the measurement in the erect position, the height of

Jason - Cross

1 the muzzle of the gun, what was your measurement?

2 A. In the erect position, 65 inches.

3 Q. And if you added 6 to that, obviously it would be at 71
4 inches, correct?

5 A. Yes.

6 Q. Which is one inch less than 6 feet?

7 A. Correct.

8 Q. And you would agree that it's your opinion that it would be
9 highly unlikely that the muzzle of the gun could have been that
10 high to get these trajectories with Mr. Boyd in a seated
11 position?

12 A. It's -- yes. The evidence, physical evidence is consistent
13 with a lower shooting height.

14 Q. And the physical evidence is not consistent with a shooting
15 height of that approximation, would you agree?

16 A. Of 71 inches?

17 Q. Correct.

18 A. Yes. I think it's more consistent with a lower height,
19 lower elevation.

20 Q. And when you say it's not consistent, that's given --
21 assuming Mr. Boyd's in a sitting position and the trajectories?

22 MR. LOEBS: Objection, misstates his testimony. He
23 didn't say not consistent.

24 THE COURT: I will overrule. It's in the form of a
25 question.

Jason - Cross

1 A. Could you restate that, please?

2 Q. Sure. When you say that -- strike that.

3 It is your testimony, is it not, that a shooting
4 height of 71 inches is not consistent with the physical
5 evidence of the trajectories with Mr. Boyd in a seated
6 position?

7 A. I think the lower height is more consistent.

8 Q. Did you do any angle calculations at the higher height?

9 A. I didn't do them at every height. I did them at 51 inches
10 relative to the sidewalk and found that that was consistent
11 with the wound paths.

12 Q. What's your second measurement that you have, erect, 65
13 inches? What's your next one?

14 A. I have erect, 65 inches. Combat distance, 58 inches.

15 Q. Okay. So a combat stance of 58 inches, again you'd have to
16 add 6 inches to that, correct?

17 A. Yes.

18 Q. What's your next measurement?

19 A. 55 -- I call it relaxed.

20 Q. Okay. And then the 51 inches was the lowest measurement?

21 A. Yes.

22 Q. And what did that measurement represent?

23 A. Crouched with relaxed position.

24 Q. Okay. And the angle degrees that you calculated for us
25 last Thursday were with the lowest measurement, correct?

Jason - Cross

1 A. The angles.

2 Q. The trajectories that you calculated for us on Thursday,
3 you used the 51-inch height?

4 A. I used the 51 inches for my calculations, yes.

5 Q. Now, is it your testimony that you think that was the
6 height of the muzzle of the gun at the time of the first shot?

7 A. It's consistent -- the evidence is consistent with that,
8 yes.

9 Q. And is it your opinion that the height of the gun rose
10 after the first shot?

11 A. That the muzzle of the gun rose slightly, yes.

12 Q. What was your opinion that the height of the gun was at the
13 second shot?

14 MR. LOEBS: Objection as to vague as to whether we're
15 talking about height on the pavement or the sidewalk.

16 Q. From the ground?

17 A. We're talking about the muzzle height?

18 Q. Correct.

19 A. Slightly higher.

20 Q. How much?

21 A. Less than a half inch.

22 Q. And is it your opinion that the gun rose again on the third
23 shot?

24 A. Yes.

25 Q. And how much did it rise at that time?

Jason - Cross

1 A. Less than a half inch, maybe less than a quarter inch.

2 Q. Do you know if this weapon was in double action or single
3 action mode?

4 A. It was in -- after the first shot it was certainly in
5 single action mode.

6 Q. Right. And some of the pressure would be released after
7 the first shot, correct?

8 A. Some of the pressure?

9 Q. Well, you would expect less of a -- I don't know what the
10 proper term is -- less of a kickback, if you will, after the
11 first shot when you're continuing to fire the weapon?

12 A. No, no, no. That has no relation. Whether you fire a gun
13 single action or double action has no relation to the recoil.
14 There's no relation.

15 Q. Okay. What's your understanding as to how many hands
16 Officer Paine had on the weapon at the time he shot?

17 A. There's no physical evidence to provide that information.

18 Q. Well, when you were talking to him about how he holds his
19 gun and he was showing you, did he show you whether he had it
20 in one hand or two?

21 A. He demonstrated two hands.

22 Q. Okay. Now, the two points that we saw on U-5, the distance
23 between the entry wound on the leg and the entry wound on the
24 right abdomen, you would agree that that would be more than a
25 foot apart?

Jason - Cross

1 A. The entry wound on the leg and the entry wound on the
2 abdomen. In what dimension are we talking, vertical distance
3 or horizontal distance?

4 Q. Horizontal.

5 A. I don't think it's more than a foot, necessarily.

6 Q. What would be your estimate?

7 A. It depends how the body's rotated. If you rotate it
8 enough, sufficiently, as I'm indicating, just using my body, at
9 some point you could get the entry wound on the torso almost
10 maybe directly above in the vertical axis, above the thigh
11 entry. So there'd be very little horizontal distance. And
12 then just the vertical distance -- it's hard to say.

13 Q. How about with respect to the photo we just looked at at
14 U-5. In that position, what would be your estimate on the
15 horizontal?

16 A. I'm not sure. 10 inches? In the picture the way I had it,
17 without any movement associated with the body, it could be a
18 foot.

19 Q. So if -- and is it your testimony that the first shot was
20 to the leg?

21 A. The physical evidence is consistent with that.

22 Q. Is the physical evidence also consistent with the first
23 shot being to the abdomen?

24 A. If the first shot was to the abdomen, then the hand would
25 then have to move lower -- or then -- no, the hand could have

Jason - Cross

1 been where it was. It's possible that the first shot was to
2 the abdomen.

3 Q. Okay. If the first shot was to the leg, which is your
4 opinion?

5 A. Yes.

6 Q. Then you have the second shot being to the abdomen?

7 A. Yes.

8 Q. And then the third shot being out the windshield?

9 A. Yes.

10 Q. So the shooter would have to be moving from right to left
11 in between the first shot and the second shot in that analysis,
12 and I mean the muzzle of the gun would be going from the right
13 where you have the leg shot somewhat to the left to get the
14 abdomen shot; is that correct?

15 MR. LOEBS: Your Honor, objection to Mr. Galipo
16 demonstrating with his hand while the witness is not watching
17 and mistakenly imparting the question to the jury.

18 THE COURT: I wasn't watching either.

19 MR. GALIPO: I'll reask the question?

20 THE COURT: Okay.

21 Q. Mr. Jason?

22 A. Yes.

23 Q. The muzzle of the gun to go from right to left to some
24 degree, if the first shot was to the leg in the scenario you
25 have in U-5 and the second shot was to the abdomen, would you

Jason - Cross

1 agree?

2 A. Well, it depends, once again on the low rotation of the
3 body, how they align. But there could be some movement of the
4 muzzle or not. Excuse me, we're talking about left to right.
5 Very little. There'd have to be some rotation up and down.

6 Q. Then if the third shot was to the windshield, the gun would
7 have to rotate back to the right, correct?

8 A. Back to the right? No, it could just climb, just higher.

9 Q. You looked at photographs of the shot to the windshield,
10 correct?

11 A. Yes. Well, that -- in U-5, I believe that's the exhibit
12 you were showing, I believe you can see the shot.

13 MR. GALIPO: Your Honor, my next in order is? Is it
14 190 --

15 DEPUTY CLERK: Four.

16 THE COURT: Three. Because we've never used 193. It
17 just sat there. We started to use it twice. And we haven't
18 used it yet. First it was going to be (a), (b), then it was
19 going to be whatever.

20 MR. LOEBS: I think these are also marked elsewhere in
21 the defendants' submission.

22 THE COURT: Do you want to check that?

23 MR. LOEBS: It's on the back of the exhibit as with
24 the other ones, just need to flip it over. I think.

25 THE COURT: You believe that it is on the back of this

Jason - Cross

1 exhibit?

2 MR. LOEBS: I believe so. I didn't check.

3 THE COURT: Can we check it and see.

4 MR. GALIPO: There's nothing on the back.

5 MR. LOEBS: It is part of our pretrial submissions.

6 THE COURT: If it isn't on the back of his copy, then
7 we don't know. If he knew quickly, that would be fine.

8 Otherwise, 193 is what?

9 MR. GALIPO: It's a photograph of the bullet strike to
10 the windshield.

11 (Plaintiffs' Exhibit 193 marked for identification)

12 BY MR. GALIPO:

13 Q. Can you take a look at that, please, Mr. Jason?

14 A. Yes, there are two photos here.

15 Q. And do both photos show the bullet strike to the windshield
16 that you believe was caused by the third shot?

17 A. Yes, they do.

18 Q. Is the bullet strike to the windshield also consistent,
19 Mr. Jason, with a shot coming from the rear of the vehicle
20 through one of the windows and out the windshield?

21 A. It's possible, yes.

22 Q. And does that photograph accurately show the -- at least
23 from that position, the area of the windshield that was hit by
24 the bullet?

25 MR. LOEBS: Objection, lack of foundation. For this

Jason - Cross

1 witness. But we have no objections to these documents coming
2 in through other witnesses based on prior stipulation.

3 MR. GALIPO: That's fine. I'll move to admit this
4 document, your Honor.

5 THE COURT: I don't know whether it's in already or
6 not.

7 MR. GALIPO: It's not.

8 THE COURT: Is there an objection or not to the photo?

9 MR. LOEBS: No objection to the photograph. But as to
10 this witness laying the foundation for the photograph.

11 THE COURT: But you don't object to it being admitted?

12 MR. LOEBS: Correct, pursuant to previous stipulation.

13 THE COURT: I'll admit 193, to the extent that the
14 question asked the witness what in fact was at the scene,
15 unless the witness has drawn a conclusion from the evidence
16 that that was a bullet hole that he saw in the car.

17 (Plaintiffs' Exhibit 193 received in evidence)

18 MR. GALIPO: Thank you. May I publish this for the
19 jury quickly?

20 THE COURT: So I'll sustain the objection to the
21 question. But the exhibit you can walk in front of the jury.

22 (Mr. Galipo showing photographs)

23 BY MR. GALIPO:

24 Q. Now, your opinion is that the trajectory of the first shot
25 was between 5 and 10 degrees downward, or the shot to the leg?

Jason - Cross

1 A. Yes.

2 Q. And then your opinion is the trajectory of the shot to the
3 abdomen was 10 to 15 degrees downward?

4 A. Yes.

5 MR. LOEBS: Objection, vague.

6 THE COURT: Overruled.

7 Q. What's your opinion as to the trajectory of the third shot
8 through the windshield?

9 A. Very low angle of depression. Maybe one or two degrees.

10 Q. So it's your opinion that the trajectory of the first shot
11 and the angle of the gun at time of discharge was between 5 and
12 10 degrees downward; and the second shot was 10 to 15 degrees
13 downward; and then the third shot was 1 to 2 degrees downward.
14 Is that your testimony?

15 A. Something like that, yes.

16 Q. And all these shots you believe happened within a second.
17 Is that your testimony or not?

18 A. I don't think I've testified to the timing. Are you giving
19 me an assumption?

20 Q. No, I'll withdraw that last question.

21 Now, in terms of the timing, would you agree, assuming
22 Officer Paine fired three shots, you don't know if the first
23 shot hit Mr. Boyd or not?

24 A. The evidence is consistent with the first shot hitting him
25 in the leg; second in the abdomen; and the third going through

Jason - Cross

1 the windshield.

2 Q. Mr. Jason, it's also possible that the first shot didn't
3 hit him; isn't that true?

4 A. It's possible.

5 Q. And in terms of the order of the shots, possibly it could
6 have happened in any order; isn't that true?

7 A. Excuse me, I'm trying to think this out.

8 Q. All right. I got that impression.

9 A. Yes, yes. My answer is yes.

10 Q. Okay. Let's go on to a few questions about the blood
11 spatter. As of the time of your first deposition on May 8th,
12 2007, the only place that you observed what you believed to be
13 high velocity blood spatter related to this case was on the
14 bolt cover; is that correct?

15 A. At that time, yes.

16 Q. And as of the time -- and that was after you wrote your
17 report in this case, at the time of your deposition, correct?

18 A. Yes.

19 Q. And as of the second volume of your deposition on May 22nd,
20 2007, the only place that you noticed what you believed to be
21 high velocity blood spatter again was on the bolt cover; is
22 that correct?

23 A. At that time, yes.

24 Q. And I asked you about that in your deposition, where in the
25 car you believed there is high velocity blood spatter, correct?

Jason - Cross

1 A. I don't remember specifically. But at that time that was
2 the area that I knew about that had high velocity blood
3 spatter.

4 MR. GALIPO: I'd like to mark, your Honor, 194 as the
5 next in order, please. And this does have a defense exhibit
6 number on the back. I'm happy to use it. It came in my
7 original book, and I was unsure, but --

8 THE COURT: What's the number?

9 MR. GALIPO: The number on the back is E6-54.

10 THE COURT: E6?

11 MR. GALIPO: 54.

12 THE COURT: There's no E6.

13 MR. GALIPO: I'm sorry, B6-54.

14 THE COURT: There's no B6 that's in. There are a lot
15 of photographs that were identified as part of a series from
16 Mr. Jason.

17 MR. GALIPO: I can mark it anew, whatever the Court
18 would like.

19 THE COURT: We don't have it at the moment as a
20 defense exhibit in, so you may as well.

21 MR. LOEBS: For our purposes, being able to find it
22 and know what he's talking about, your Honor.

23 THE COURT: Well, is it the same as your 54, B6?

24 MR. LOEBS: Premarked in that way, I believe it is.
25 It's just easier for me to see what he's talking about.

Jason - Cross

1 THE COURT: Would you show it to counsel?

2 MR. GALIPO: I already did.

3 THE COURT: Is it B6?

4 MR. LOEBS: B6-54, yes.

5 THE COURT: Why don't we use it out of that series.

6 MR. GALIPO: That's fine.

7 THE COURT: These are all like B6 and a dash and then
8 54. Or V5, dash, 02. It's instead of using six B's or six
9 V's.

10 MR. GALIPO: That's fine, your Honor.

11 BY MR. GALIPO:

12 Q. Mr. Jason, do you have that exhibit in front of you?

13 A. Yes, I have B, as in boy, 6-54.

14 Q. What does that exhibit show?

15 A. This is a picture that I took of the -- of what's been
16 referred to as the bloody napkin.

17 Q. And on that picture you see some areas that you believed to
18 be at least medium velocity blood spatter, correct?

19 MR. LOEBS: Objection, misstates the witness's
20 testimony; argumentative.

21 THE COURT: It was in the form of a question.
22 Overruled.

23 A. There could be.

24 Q. And that's because you see some small specks of blood in
25 that picture, correct?

Jason - Cross

1 A. Yes.

2 Q. And you can visually see that on that picture without a
3 magnifying glass; is that true?

4 A. Some of them, yes.

5 MR. GALIPO: I move to admit this exhibit, your Honor.

6 THE COURT: Is there any objection to B6-54?

7 MR. LOEBS: No.

8 THE COURT: That exhibit is admitted.

9 (Defendants' Exhibit B6-54 received in evidence)

10 MR. GALIPO: May I quickly publish it to the jury,
11 your Honor.

12 THE COURT: Yes, you may.

13 (Photograph published to the jury)

14 BY MR. GALIPO:

15 Q. You don't associate, do you, the medium -- strike that.

16 You don't associate the marks on this bloody napkin
17 that are consistent with medium velocity blood spatter with the
18 shooting by Officer Paine, do you?

19 MR. LOEBS: Objection, your Honor, misstates his
20 testimony; didn't say consistent, he said possibly; it's
21 argumentative.

22 THE COURT: Well, it assumes -- the question itself
23 assumes consistency. I'll sustain.

24 Q. Are these small spots of blood on this exhibit, B6-54, in
25 your opinion, at least consistent with medium velocity blood

Jason - Cross

1 spatter?

2 A. They could be, yes. Yes, they are.

3 Q. Okay. Now, do you, in your analysis of this case,
4 associate the small marks of blood on the napkin that you
5 believe are at least consistent with medium velocity blood
6 spatter with the shooting of officer -- shooting by Officer
7 Paine of Mr. Boyd? Do you think they happened at that time?

8 A. I'd have to say that all the blood on the napkin I don't
9 think is associated with the shooting incident. There may be
10 some areas on that napkin that were exposed to blood that was
11 projected or transferred during the shooting event. But not
12 all of it.

13 Q. Did you measure those small specks of blood on the napkin?

14 A. I believe I did.

15 Q. Are they less than 1 millimeter?

16 A. Let me look at my notes on that.

17 MR. LOEBS: Is it okay if I get Mr. Jason some water?

18 THE WITNESS: I've got some.

19 THE COURT: He's got some there.

20 A. I've got the notes. No, I have no measurements noted.

21 Q. Would you agree that high velocity blood spatter is
22 normally associated with 1 millimeter markings or less -- the
23 size, 1 millimeter or less?

24 A. That is -- blood deposits of sub-1 millimeter, and others,
25 are generally associated with a high-energy type projection of

Jason - Cross

1 blood, which is consistent with a gunshot wound.

2 Q. And in looking at the last exhibit, which I'll let you look
3 at again, B6-54, can you tell by looking at it whether those
4 specks of blood, the smallest ones, are more or less than
5 1 millimeter?

6 A. It's hard to tell on a material like this because it's so
7 absorbent and the blood migrates out from the point of contact,
8 so the original size and the size we are looking at may be
9 different.

10 Q. Would you agree that high velocity blood spatter normally
11 has a mist-like appearance?

12 A. There can be misted blood from a gunshot wound, yes.

13 Q. Do you see anything that looks like a mist-like appearance
14 on the bolt cover in this case?

15 A. The bolt cover?

16 Q. I'm switching to the bolt cover.

17 A. Oh, I'm sorry. The bolt cover. What's your question? I'm
18 sorry.

19 Q. Did you see anything in this case that looks like a
20 mist-like appearance of very small particles of blood on the
21 bolt cover?

22 A. Yes.

23 Q. Can you see that in the photograph we looked at yesterday
24 with the naked eye?

25 A. No.

Jason - Cross

1 Q. Isn't it true that normally, if one was looking at a
2 pattern of high velocity blood spatter, they could see it with
3 the naked eye?

4 MR. LOEBS: Objection. Calls for speculation; lack of
5 foundation.

6 THE COURT: I'll overrule.

7 A. Depending on the substrate, the material that it's on,
8 sometimes on dark clothing you can't see blood, but if it's on
9 a contrasting surface, you can generally see that, yes.

10 Q. But in this case you could not see it with the naked eye,
11 correct?

12 MR. LOEBS: Objection, misstates his testimony.

13 THE COURT: Overruled. That's in the form of the
14 question.

15 A. You can see it on the bolt cover.

16 Q. Yesterday, did you tell us that you could not see high
17 velocity blood spatter on the -- at least on the photograph
18 that we looked at on the bolt cover?

19 A. On that printout of the photograph, yes.

20 MR. GALIPO: Next in order would be -- this has a,
21 again, number on the back. I'm happy to use that.

22 THE COURT: What number do you have?

23 MR. GALIPO: B6-279.

24 Q. Is that an item you looked at in this case? What is that?

25 A. That is a left leg prosthesis.

Jason - Cross

1 Q. And does it have what happens to be a bullet defect in part
2 of it?

3 A. Yes.

4 Q. And what part appears to have a bullet defect?

5 A. The upper area above the knee or the knee joint, in a white
6 neoprene type garment -- I'm not sure what it's called.

7 Q. Is it your understanding that bullet defect was caused by
8 the lower bullet wound to the leg?

9 A. Yes.

10 Q. When I say "lower," you understand I'm speaking
11 anatomically?

12 A. Yes.

13 Q. You did rely on the measurements in Dr. Smith's medical
14 report, correct?

15 A. I did, yes.

16 Q. And showing you Page 1 of the report, for reference, does
17 Dr. Smith do a measurement of the -- from the sole of the foot
18 to that entrance point in terms of inches?

19 A. Yes, I see that.

20 Q. And what is the measurement?

21 A. It's 27.75 inches.

22 Q. 27.75. You measured the rocker panel to be 18 inches off
23 the floor, correct?

24 A. It was 18 or 19.

25 Q. I'm not talking about Dr. Smith's measurement of 19. I'm

Jason - Cross

1 talking about your measurement.

2 A. I measured the outer edge of it, but it is the lower edge,
3 as 18, yes.

4 Q. And this bolt cover sits on the floorboard, correct?

5 A. Yes.

6 Q. And it's your testimony that you believe the left hand of
7 Mr. Boyd was within a couple of inches of that bolt cover,
8 correct?

9 A. Yes.

10 Q. But not touching it most likely, correct?

11 A. Some portion of his hand could be touching it.

12 Q. Well, that would put his hand only about 20 or 21 inches
13 off the ground, correct?

14 A. The height to the -- what I measured as the bottom of the
15 rocker panel, that's not the level of the surface of the
16 carpeted area.

17 Q. Let's assume --

18 A. That's higher.

19 Q. Let's assume that surface is 19 inches, not 18.

20 A. I think it's higher than that.

21 Q. So it's your testimony that you believe it's -- from the
22 ground to the floorboard is more than 19 inches?

23 A. Well, the floorboard -- we're talking about floorboard or
24 rocker panel, there's a difference. The rocker panel is a
25 little bit lower than the actual floor, maybe half an inch.

Jason - Cross

1 Q. I understand about a half an inch, but haven't you been
2 using 19 inches in your calculations, and then you estimated
3 that the wound was about 4 inches up, so 19 plus 4 was 23
4 inches? Weren't you using those types of calculations?

5 A. Yes, I was.

6 Q. So you would have the hand, if those calculations are
7 correct, about 21 inches off the floor, correct?

8 Taking the 19 inches for the floorboard and you have
9 the hand approximately 2 inches above the bolt cover, which is
10 on the floorboard?

11 MR. LOEBS: Objection. Misstates the testimony;
12 argumentative; and it's compound.

13 THE COURT: Well, if you say and you have -- if you're
14 saying the witness has said that?

15 MR. GALIPO: Yes.

16 THE COURT: I'll sustain as to the form of that.

17 MR. GALIPO: Sure.

18 BY MR. GALIPO:

19 Q. Assuming that the floorboard is 19 inches off the ground
20 and his hand is a couple of inches above the bolt cover which
21 is on the floorboard, wouldn't that put his hand about 21 or 22
22 inches off the ground?

23 A. Something like that.

24 Q. And the distance from the sole of the foot to the defect in
25 the prosthetic is 27.75 inches?

Jason - Cross

1 MR. LOEBS: Objection, vague as to the nature of the
2 measurement.

3 THE COURT: I will overrule. The witness can explain
4 if he needs to.

5 A. If he was standing erect, not seated. But that dimension
6 is with the leg erect, not bent at the knee.

7 MR. GALIPO: The next two exhibits, your Honor, also
8 have numbers on the back that I'm happy to use.

9 THE COURT: Is it part of the same series of
10 photographs apparently taken by this witness.

11 MR. GALIPO: These are --

12 MR. LOEBS: No.

13 MR. GALIPO: Part of another set.

14 THE COURT: Okay. What's the letter?

15 MR. GALIPO: W-14 and W-15. I don't know if we have
16 these. I don't believe so.

17 THE COURT: Just single W, right?

18 MR. GALIPO: Yes.

19 THE COURT: We have Ws in, but I don't think that one.
20 We stopped with 13.

21 DEPUTY CLERK: Yes, they're in.

22 THE COURT: Miss Lucero shows 14 and 15 in. We both
23 show September 11 with Dr. Smith as the witness, but I showed
24 18, 46, 54, 57, 21 to 23, 7 to 13, 43, 33.

25 MR. GALIPO: Your Honor, if I could show him these if

Jason - Cross

1 they're not in --

2 THE COURT: Miss Lucero thinks they are. But this is
3 out of the Ws?

4 MR. GALIPO: Yes.

5 THE COURT: Just in case, we'll say 14 and 15. Is
6 there any objection to them?

7 BY MR. GALIPO:

8 Q. Mr. Jason, looking at Exhibits W-14 and W-15 --

9 THE COURT: Is there any objection to those being
10 admitted, if they weren't already?

11 MR. LOEBS: No, your Honor, pursuant to our prior
12 stipulation related to these being photographs taken by
13 Dr. Smith.

14 THE COURT: So they'll be in one way or the other.
15 Okay.

16 (Defendants' Exhibits W-14 and W-15 received in
17 evidence)

18 BY MR. GALIPO:

19 Q. What are those, Mr. Jason?

20 A. These are pictures that I did not take of a garment that's
21 associated with the prosthesis. I think it's called a stump
22 sock, but I'm not really sure.

23 Q. And it has what appears to be blood on it, correct?

24 A. Yes.

25 Q. All -- it also has what appears to be at least one or more

Jason - Cross

1 bullet defects in it, correct?

2 A. Yes.

3 Q. Now, you at some point in your analysis of this case looked
4 at the projectile that you understood to be taken from the left
5 hand, correct?

6 A. Yes, I did.

7 Q. And you noted white fibers on it, visually, when you looked
8 at it?

9 A. I did.

10 Q. And do you know what those -- strike that.

11 And your impression was that those white fibers may be
12 consistent potentially with this white stump sock that you're
13 referring to?

14 A. Yes.

15 Q. Do you know if any testing ever confirmed that or not?

16 A. I know that that is not the case.

17 Q. Okay. And you understood that Mr. Boyd was wearing a
18 do-rag at some point when he was in the car, correct?

19 A. I did not know that.

20 Q. Do you recall us at the time of your deposition discussing
21 that he had a white do-rag on?

22 MR. LOEBS: Object to the question in terms of
23 Mr. Galipo testifying to the facts of the case.

24 THE COURT: Sustain as to the form.

25 Q. Were you ever told in this case at any time in the

Jason - Cross

1 two-and-a-half years you've been working on it --

2 MR. LOEBS: Object to the form of the question as to
3 what he was told this is related to the facts of the case.
4 It's not a proper hypothetical.

5 THE COURT: Sustained.

6 Q. Do you have any information --

7 MR. LOEBS: Your Honor, same objection.

8 MR. GALIPO: Your Honor?

9 THE COURT: Overruled.

10 Q. Do you have any information as to whether or not Mr. Boyd
11 was wearing a white do-rag when he was in the SUV?

12 MR. LOEBS: Objection, vague as to time.

13 THE COURT: Overruled.

14 A. I believe you asked me that question during the deposition.

15 Q. Okay. And did you have any information as to what color it
16 was?

17 A. No.

18 Q. Have you ever examined or seen this white do-rag?

19 A. I have never examined the -- a do-rag.

20 Q. Would you agree that in terms of analyzing the potential
21 graze wound to the head, you did not have as part of your
22 analysis the potential head covering he was wearing?

23 A. If there was a head covering, I'm not aware of it; and I
24 did not examine any head covering.

25 Q. Where was -- strike that.

Jason - Cross

1 When did you examine the bullet and see these white
2 fibers on it? When was that?

3 A. I examined the evidence on the 2nd of November, 2006.

4 Q. And you referred --

5 A. Excuse me, sir.

6 Q. I'm sorry, go ahead.

7 A. On the 1st of November, I examined -- the 1st of November
8 and 2nd of November of 2006.

9 Q. And you referred in one of your answers to Mr. Loeb's
10 questions, I think there was part of it, and if Faye Springer
11 did a fiber analysis that showed that there were fibers
12 consistent or indistinguishable from the jeans and from the
13 boxer shorts, would that further confirm your opinion that the
14 shot through the leg went into the hand. Do you remember that
15 question?

16 A. By Mr. Loeb's?

17 Q. Yes.

18 A. Yes.

19 Q. Okay. Did you have an understanding as to when Faye
20 Springer did this analysis, before or after you observed these
21 white fibers on the projectile in November of 2006?

22 A. I believe it was after that.

23 Q. The shot at Scott Street, was your original opinion that
24 the angle of that bullet was 20 degrees upward, approximately?

25 A. That was my original estimation.

Jason - Cross

1 Q. What's your opinion on that now?

2 A. It's more likely a higher elevation than that.

3 Q. The shot at Broderick, were you provided with any bullet
4 evidence or casing evidence to try to establish that that shot
5 took place based on physical evidence?

6 A. Well, I'm -- could you ask that again, please.

7 Q. Sure. Were you ever provided with any bullet evidence that
8 you understood related to a shot on Broderick?

9 A. Yes.

10 Q. You were? And I'm not talking about Scott Street now, I'm
11 talking about Broderick.

12 A. Oh, I'm sorry. Let me get my streets right. Broderick.
13 You mean --

14 Q. Would it refresh your recollection to look at your report
15 in that regard?

16 A. Yes, it would.

17 Q. Okay. If you turn to Page 3 of your report under Finding
18 9, if you could take a look at that and see if that refreshes
19 your recollection.

20 A. Okay. Yes.

21 Q. Okay. Have you had a chance to look at that?

22 A. Yes. Oh, you're talking about a shot by the decedent?

23 Q. Correct.

24 A. Yes, I'm sorry, I misunderstood.

25 Q. Okay. Was there any physical evidence in terms of a

Jason - Cross

1 bullet, a bullet strike, a casing, that you were provided that
2 could help you substantiate that shot?

3 MR. LOEBS: Objection, vague as to the physical
4 evidence, unless it's limited to just the things Mr. Galipo
5 referred to.

6 THE COURT: I will overrule. The witness can explain.
7 A. The evidence -- there is no physical evidence of the
8 bullet, of a bullet. The only evidence was the 9 or the police
9 dispatch tape, on which a shot was reported.

10 Q. Okay. I'd like to talk to you next about the photographs
11 you took from what you understood to be Mr. Campos's apartment.
12 When approximately did you do that?

13 A. 23 March, 2007.

14 Q. And you understood Mr. Campos was residing in Unit 618 at
15 the time of this incident?

16 A. Let me look that up.

17 Q. I don't know if it helps you looking -- I don't know, it
18 might be too far away. I'll put up the exhibit. This is
19 V5-02. But do you have some notes on that?

20 A. Yes, I believe it was 618.

21 Q. Okay. And you understood -- you took the pictures from the
22 third floor window, correct?

23 A. Yes.

24 Q. Why did you take the pictures from the third floor window?

25 A. Because I was asked to use that window as the subject of

Jason - Cross

1 that photography project.

2 MR. GALIPO: Your Honor, my next in order?

3 THE COURT: Is this one that's been marked by anyone
4 else?

5 MR. GALIPO: No. But it's a -- two pictures that can
6 be (a) and (b) of the same number.

7 THE COURT: What about 194; is that where you are,
8 Miss Lucero?

9 DEPUTY CLERK: Yes.

10 THE COURT: Thank you. 194(a) and (b).

11 MR. LOEBS: One of the exhibits is not only marked but
12 has been admitted. The other one has been premarked. So I
13 think it's -- if I could have a minute with Mr. Galipo.

14 MR. GALIPO: I think it's a different view. If it's
15 duplicative -- I'd rather just keep moving on.

16 MR. LOEBS: What we're talking about has been admitted
17 as evidence.

18 THE COURT: If you know what it is, that's fine. But
19 for the moment -- all right.

20 Miss Bernstein, you have something you think
21 replicates these two? Could counsel just look at them together
22 and see whether they're the same or you agree they're the same,
23 even if they aren't the same.

24 (Pause in proceedings)

25 MR. GALIPO: Okay, your Honor, at Mr. Loeb's request,

Jason - Cross

1 we still have 194, and it's just going to have 194 without the
2 (a) and (b). And the other one is Y5-01. That he believes is
3 already in -- actually now that I look at it -- no, that's all
4 right. Y5-01 which he believes is already in evidence.

5 THE COURT: Okay. It's one photograph that's new.
6 Under those circumstances, there really isn't any much reason
7 to split it up. But go ahead now that you've done that.

8 (Plaintiff's Exhibit 194 marked for identification)

9 BY MR. GALIPO:

10 Q. Looking at 194, Mr. Jason, does that appear to be a picture
11 from the outside of where Unit 618 would be?

12 A. Yes.

13 Q. And does that show the third-story window?

14 A. Yes.

15 Q. And looking at Y5-01, is that a picture looking out from
16 that third-story window that would encompass part of the area
17 where the, as you understand it, the shooting incident took
18 place?

19 A. Yes.

20 Q. I think you previously told us that your opinion in this
21 case is that Officer Paine was in the area of 618 on the ground
22 level when he fired the shots; is that correct?

23 A. Well, the physical evidence is consistent with the shooting
24 location at that point.

25 Q. So Mr. Campos's window, if you could tell by looking at the

Jason - Cross

1 photos, would be directly above where Officer Paine was at when
2 he shot?

3 A. I'm saying it's a consistent shooting location, right below
4 that window. Consistent with the physical evidence.

5 Q. Given your taking of the pictures and going up to that
6 apartment on the third floor, do you believe that Mr. Campos
7 would have had a good view?

8 A. Of what?

9 Q. Of the incident at the time Mr. Boyd was shot.

10 A. He could have had a very good -- he had a good view of the
11 street and the SUV. He could have, yes.

12 Q. Okay. Now, and looking at 180(a), which is a blowup of 180
13 which is in evidence, would that be the side of the vehicle,
14 the driver's side that Mr. Campos would have been looking at
15 from his window?

16 A. Yes.

17 Q. Now, I want you to assume these facts:

18 Assume that from Mr. Campos's window, Mr. Campos could
19 not see the floorboard area in front of the seat. I want you
20 to assume that fact to be true.

21 A. Okay.

22 Q. Okay. Does that tell you anything about the positioning of
23 the vehicle relative to Mr. Campos's unit at 618 if Mr. Campos
24 from his third-story window could not see the floorboard area
25 in front of the seat?

Jason - Cross

1 MR. LOEBS: Object to the question, lack of
2 foundation; calling for speculation; incomplete hypothetical.

3 THE COURT: Are you saying -- are you asking him to
4 assume Mr. Campos could or couldn't see the floorboard?

5 MR. GALIPO: Correct, your Honor. And if necessary, I
6 can cite the trial testimony that I ordered.

7 THE COURT: All right. And it's could or couldn't.

8 MR. GALIPO: Could not --

9 THE COURT: Okay.

10 MR. GALIPO: -- see the area of the floorboard or
11 carpeting in front of the driver's seat from his window.

12 THE COURT: And then what's the question?

13 BY MR. GALIPO:

14 Q. Assuming that to be true, does that tell you anything about
15 the positioning of the door relative to Unit 618 at the time
16 the shots were fired?

17 MR. LOEBS: Vague; incomplete hypothetical; calls for
18 speculation; lack of foundation.

19 THE COURT: Overruled.

20 A. It's hard to make an assumption. Is it because he couldn't
21 see -- you're talking about the floorboard of the vehicle in
22 front of the driver's seat, not the other part; is that right?

23 Q. Anything from the front of the driver's seat forward he
24 could not see, I want you to assume that to be true, from his
25 viewpoint.

Jason - Cross

1 MR. LOEBS: Objection, your Honor, lack of foundation.

2 THE COURT: I'll overrule.

3 A. Is this because the decedent was in the way of his vision
4 of the floorboard? Is that part of the question?

5 Q. I want you to assume from the time the door, the vehicle
6 stopped and the door opened, up until the time Mr. Boyd fell to
7 the ground, whether Mr. Boyd was in that area or not,
8 Mr. Campos could not see the floorboard area in front of the
9 seat from his viewpoint?

10 MR. LOEBS: Lack of foundation, calls for speculation.

11 THE COURT: It may. Because this isn't a fixed item
12 of some sort. It's a -- you're asking him to assume a human
13 being's perceptions at a particular point which could vary in
14 any manner. I'm going to sustain.

15 Q. Let me ask you this: Assuming that Mr. Campos at the time
16 the shots were fired could see both of Mr. Boyd's hands. Do
17 you have that fact in mind?

18 A. Yes.

19 Q. Assuming that to be true, do you have an opinion as to
20 whether or not Mr. Boyd's hands could have been in front and
21 under the driver's seat of the vehicle at the time the shots
22 were fired?

23 MR. LOEBS: Objection, vague and ambiguous as to the
24 use -- and compound as to front and under.

25 THE COURT: I think it's the same problem. In other

Jason - Cross

1 words, if you're asking someone to assume that something is
2 blocking someone's vision or something -- or they're standing
3 in a particular place where their vision is blocked, but if you
4 say someone didn't see or could see, I think that's
5 problematic. There are too many factors that can come into
6 play. So I would sustain.

7 BY MR. GALIPO:

8 Q. Based on your viewing the view on the third story in
9 Mr. Campos's unit and looking at the picture that you took of
10 that view, do you have an opinion as to whether or not, if
11 Mr. Campos observed when Mr. Boyd moved to the left the first
12 time, towards the vehicle, he did not -- his hands did not go
13 inside the vehicle at all, do you believe that's something
14 Mr. Campos would have been able to see from his window?

15 MR. LOEBS: Objection, lack of foundation; calls for
16 speculation.

17 THE COURT: Sustained as to the form at least. It's
18 really asking him to comment on the credibility of the witness.

19 MR. GALIPO: That's fine.

20 Q. Now, did you also give opinions about the viewpoints of
21 other witnesses? Did you do an analysis on that in your
22 report?

23 A. No.

24 MR. LOEBS: Objection, compound.

25 MR. GALIPO: Well, I'll withdraw.

Jason - Cross

1 Q. In your report, one of the three areas that you were asked
2 to be looked into is what various witnesses could see from
3 their point of view. Correct?

4 A. I think that's listed in my report, yes.

5 Q. And that's something you were asked to do in this case,
6 correct?

7 A. Just for one witness.

8 Q. Only for one witness?

9 A. One witness, yes.

10 Q. Isn't, on Page 3 of your report, your third primary task to
11 determine what would have been observed by witnesses, plural?

12 A. Yes, that's what it says.

13 Q. Well -- strike that.

14 Didn't you attempt to determine in your review of this
15 case whether different witnesses would have been able to see
16 Mr. Boyd at the time of the shooting if he was down in the
17 position that you described, showed us in U-5?

18 MR. LOEBS: Objection, vague as to the term "different
19 witnesses."

20 THE COURT: Overruled.

21 A. I did not do that, no.

22 Q. You don't have any opinions, for example, on whether people
23 looking out their windows from various sides of the street
24 would have been able to see Mr. Boyd if he was in the position
25 that you're showing in U-5?

Jason - Cross

1 A. No. The only person I did that -- the only location I did
2 that was in Campos's apartment.

3 Q. I'd like to talk for a moment about the casings.

4 A. About the what, sir?

5 Q. About the casings. You looked at the casings, didn't you,
6 sir?

7 A. Yes.

8 MR. GALIPO: We have an exhibit, we have a blowup of
9 Exhibit F-8.

10 THE COURT: F-8. Has that blowup been marked in any
11 way?

12 MR. GALIPO: It doesn't look like it. I'm happy to
13 mark it now. F-8(1).

14 THE COURT: F-8(1). Just so that we keep this clear
15 at this point as to what we have, given there were some
16 questions about it.

17 (Defendants' Exhibit F-8(1) marked for identification)
18 BY MR. GALIPO:

19 Q. Do you have a copy of this anywhere handy?

20 A. Yes, I do. I have it right here in front of me.

21 Q. I'll try to stand to the side. Now, Item Number 15 that we
22 see where I'm pointing at, that's a casing; is that correct?

23 A. That represents a location of a casing, yes.

24 Q. And did you indicate yesterday that casings from these
25 types of weapons eject to the right?

Jason - Cross

1 A. Yes.

2 Q. And did you say to the right and backwards?

3 A. Generally to the right and backwards. There's some
4 variation, depending on the condition of the gun and the
5 extractor, ejector.

6 Q. Did you associate casing 15 with Officer O'Malley's shot?

7 A. That has been identified, yes.

8 Q. Now --

9 THE COURT: Just so we're clear, this is Sergeant
10 Riggle's sketch?

11 MR. GALIPO: Diagram.

12 THE COURT: Or diagram.

13 MR. GALIPO: Yes, your Honor.

14 THE COURT: Okay.

15 Q. Although we can't see 618 on this diagram, it would be in
16 the area to the north of this empty parking space I'm pointing
17 to here; is that correct?

18 A. That's correct.

19 Q. Okay. Now, when you started looking at this case, you were
20 looking for any casings around the area of 618; is that true?

21 A. Well, I never actually looked for casings at the scene.

22 Q. You were looking for evidence in terms of the diagram or
23 photographs of casings that would be around that area?

24 MR. LOEBS: Objection, vague as to "around."

25 THE COURT: Overruled.

Jason - Cross

1 A. I looked at all the locations of the casings. I'm not sure
2 what you're asking. I looked at every location and considered
3 them all.

4 Q. Okay. If I understood your testimony correctly on
5 Thursday, you're associating the casing which is identified by
6 Number 6 and the casing identified by Number 11 with Officer
7 Paine's casings?

8 A. 6 and 11, yes.

9 Q. And did you calculate the distance of those casings from
10 where Officer Paine would be on the north side of that parking
11 space by 618?

12 A. I didn't calculate the distance formally, but I took note
13 of it.

14 Q. Okay. And you did that in part by the widths of the
15 parking spaces, correct?

16 A. Yes.

17 Q. The distance of the one casing's approximately 24 feet; is
18 that right?

19 MR. LOEBS: Objection, which casing we're referring
20 to, your Honor.

21 Q. The furthest casing would be Number 6; is that correct?

22 A. The furthest casing from the location of 618? Is that what
23 you're asking?

24 Q. Yes.

25 MR. LOEBS: Objection, vague.

Jason - Cross

1 THE COURT: Overruled.

2 A. Let's see. 20-something feet, yes.

3 Q. Casing 11 is approximately 16 to 18 feet; is that correct?

4 A. Approximately.

5 Q. That would be on the other side of two parked cars; is that
6 correct?

7 A. That's correct.

8 Q. Now, you mentioned a third casing, correct?

9 A. Yes.

10 Q. And you were provided with information that that casing --

11 MR. LOEBS: Your Honor, object to this. We may need
12 to be heard out of the presence of the jury.

13 THE COURT: Pardon?

14 MR. LOEBS: We may need to be heard out of the
15 presence of the jury.

16 THE COURT: Well, if the witness didn't rely on
17 something in forming his opinion, what somebody may have said
18 to him really is irrelevant.

19 BY MR. GALIPO:

20 Q. Let me ask another question. You calculated the distance
21 of the third casing that you associate with Officer Paine to be
22 12 feet from his location; is that correct?

23 A. I didn't calculate any distances. You're talking about the
24 third casing now?

25 Q. Yes. You estimated it to be 10 to 12 feet from his

Jason - Cross

1 location, correct?

2 A. Did I do that formally?

3 Q. At the time of your deposition. Do you recall?

4 A. I don't recall. But 10 to 12 feet seems a bit far from my
5 understanding of where it was located.

6 Q. What is your estimate of the distance of the third casing
7 you associate with Officer Paine to his location?

8 A. Maybe 8 feet away.

9 Q. And where was that casing and what do you base that
10 distance on?

11 MR. LOEBS: Your Honor, object. We asked this very
12 question of a witness who was testifying, and Mr. Galipo
13 objected on the grounds of hearsay.

14 MR. GALIPO: No, I didn't object.

15 MR. LOEBS: Now he's trying to elicit this
16 information. I'm confused as to --

17 THE COURT: Your confusion is not a legitimate
18 objection. So I'll overrule on those grounds. And the history
19 of objections, I'll overrule on also.

20 And what you're left with is you're asking him did he
21 calculate in some way the location of a particular casing, or
22 has he done so now, or are you asking him did he do so before
23 or is he doing it now?

24 MR. GALIPO: He's already given us an 8-foot --

25 THE COURT: I don't want to hear a history. Are you

Jason - Cross

1 asking him what his opinion is here in court, or are you asking
2 him what he said at some earlier time?

3 MR. GALIPO: What his opinion is here in court, and I
4 just want to let the Court know, I know the Court's working on
5 a lot of things at the same time, but he already answered 8
6 feet.

7 THE COURT: Well, I'm not working on a lot of things
8 at the same time. I'm trying to rule on your objection. So --
9 or Mr. Loeb's objection. The only thing that was unclear to me
10 is whether you were trying to get his current opinion.

11 MR. GALIPO: Yes.

12 THE COURT: Okay. Well, then ask him a question.

13 BY MR. GALIPO:

14 Q. What is your current opinion about the distance of the
15 third casing from where Officer Paine was located?

16 A. About 8 to 10 feet.

17 Q. Eight to ten feet. And you're basing that on information
18 that was provided to you that a casing was found on the
19 windshield area of this vehicle parked in the parking space
20 adjacent to the empty parking space; is that correct?

21 A. Yes.

22 Q. Okay. And you noted that in your notes, correct?

23 A. Yes.

24 Q. You included that on a modified -- on a diagram that --
25 strike that.

Jason - Cross

1 You made notes also on Officer Riggle's diagram, and
2 you included in there that additional casing, correct?

3 A. That's correct.

4 Q. Which you listed as Item Number 16?

5 A. That's correct.

6 Q. Okay. Now, and that particular casing, at least on
7 information you were provided, was on an area of the windshield
8 by the window wiper of that vehicle?

9 A. Yes.

10 Q. And that vehicle on the information you were provided
11 including the photos of the scene was backed into that space.
12 Is that correct?

13 A. Yes.

14 Q. Now, given your testimony that casings eject upward and to
15 the back, what is your opinion as to how that casing ended up
16 on the windshield of that car?

17 A. Well, there are many possibilities. One is that if a
18 shooter was located to the rear of the car, that is the way
19 it's parked, that is on the sidewalk, adjacent to the car, and
20 slightly to the left of the car as we're looking at it, below
21 the car as we're looking at it, an ejected casing could land on
22 the roof of the car and roll forward and be caught -- down the
23 windshield and be caught in that little recessed area where the
24 windshield wipers stay when they're not being used. It's
25 actually quite common that casings collect there.

Jason - Cross

1 Q. Well, Mr. Jason --

2 MR. LOEBS: Excuse me, your Honor, Mr. Galipo's
3 cutting off Mr. Jason's answer.

4 THE COURT: I think his last words, "it's actually
5 quite common that casings collect there."

6 MR. GALIPO: I thought he was done. I apologize.

7 Q. Okay. Your testimony that casings eject upwards and
8 backwards, how would then, if Officer Paine was standing on the
9 sidewalk, that casing land on the hood of that vehicle --

10 A. Well --

11 Q. -- if the casing went upwards to the right and backwards?

12 MR. LOEBS: Loebs, argumentative.

13 THE COURT: Overruled.

14 A. First of all, there's a great variation in ejection
15 patterns. You won't find even with the same gun, the same
16 ammunition, from one box, you won't find the casings all
17 landing in one particular area. There'll be a distribution
18 that would be, some would be forward of the ejection port, some
19 would be rear of the ejection port. They all may be to the
20 right of the ejection port.

21 But if you had a shooter who was holding his gun
22 aiming it diagonally across the street, not straight across the
23 street, it easily accommodates an ejected casing to hit the
24 roof of that car again, and roll wherever it wanted to roll.

25 Q. Your testimony is, in your opinion, Officer Paine fired

Jason - Cross

1 from the same weapon from the same Position 3 consecutive
2 shots, and one of the casings ended up on the windshield of the
3 vehicle parked next to the space, approximately 8 feet away,
4 according to your estimate, and another casing ended up 16 to
5 18 feet away on the other side of two parked cars. And the
6 third casing ended up 24 feet away on the sidewalk?

7 A. Yes. Well, I'm sorry, if you're asking me a question about
8 it, I'd say the physical evidence is consistent. The casing
9 locations are consistent with the shooting locations I
10 described near 618.

11 Q. Now, we talked about, yesterday, someone falling to the
12 ground, the minimum time for someone 6 feet to fall flat to the
13 ground is a half a second. Minimum time, correct?

14 A. Minimum time.

15 Q. In looking at the crime scene photographs, did you look at
16 the resting position of the prosthetics of Mr. Boyd relative to
17 the car?

18 A. I never actually saw them exposed. They were covered by a
19 tarp.

20 Q. Okay. Well, with respect to the tarp that you understood
21 to be covering them, did you see where that tarp was in
22 relation to the car of his prosthetics?

23 A. There were two tarps. One had the body; one had the
24 prosthetics. And I did note them. Yes.

25 Q. And would you agree that the tarp related to the

Jason - Cross

1 prosthetics was positioned in line with the rear door on the
2 driver's side of the vehicle?

3 A. I only had the information that was provided in the sketch
4 and in the photos, if that's what you're asking me. Whatever
5 they show, that's what I believe to be what I rely on.

6 Q. In looking at those photos in that sketch -- strike that.

7 You indicated that this sketch was fairly accurate,
8 correct?

9 A. Well, I think it is generally accurate, yes. Comparing it
10 to the pictures.

11 Q. And Item 13 in this sketch relates to the prosthetics,
12 correct?

13 A. Yes, that relates to that, yes.

14 Q. And do you know, Mr. Jason, if Mr. Boyd was in the area
15 that you have shown in U-5 when he was shot, how his
16 prosthetics ended up in the area of the rear passenger door on
17 the driver's side?

18 MR. LOEBS: Objection. Lack of foundation; calls for
19 speculation.

20 THE COURT: Yes. The question, "do you know," I'll
21 sustain.

22 Q. Now, regarding X5-02, let me ask you a few follow-up
23 questions. You remember Exhibit 184 and 185, we talked about
24 yesterday?

25 A. Yes, I do.

Jason - Cross

1 Q. You submitted those to Mr. Loeb's at some point in time
2 after your deposition. Is that correct?

3 MR. LOEB'S: Objection, misstates the witness's
4 testimony.

5 MR. GALIPO: It's a question.

6 MR. LOEB'S: Your Honor, it's argumentative.

7 THE COURT: No, I'll overrule. Because it is in the
8 form of a question. If the witness says, No, I didn't say
9 that, that's fine.

10 THE WITNESS: I don't know when they were submitted.
11 BY MR. GALIPO:

12 Q. Okay. Would it help to refresh your recollection to look
13 at a discussion about when you were going to do that in your
14 deposition?

15 MR. LOEB'S: Objection, vague as to "do that."

16 MR. GALIPO: Make the depiction of the scene.

17 MR. LOEB'S: Same objection, your Honor.

18 THE COURT: Overruled. Although you did ask him about
19 this yesterday and tried to refresh his recollection yesterday.

20 MR. GALIPO: I'll briefly try one last time.

21 THE COURT: Okay.

22 MR. GALIPO: And then move on.

23 Q. Would it potentially refresh your recollection as to when
24 you did it by looking at a discussion in that regard in your
25 deposition?

Jason - Cross

1 MR. LOEBS: Objection, vague as to "when you did it."

2 THE COURT: By "did it," do you mean --

3 MR. GALIPO: 184 and 185.

4 THE COURT: But did what; drew them, gave them to
5 someone, which?

6 MR. GALIPO: No, first of all --

7 THE COURT: Just ask the question.

8 MR. GALIPO: Okay.

9 THE COURT: Okay.

10 BY MR. GALIPO:

11 Q. Would it refresh your recollection to look at a discussion
12 in your deposition about when you were planning on doing a
13 depiction of the scene with regards to whether or not you gave
14 them to Mr. Loeb before or after your deposition?

15 MR. LOEBS: Your Honor, same objection as to what he
16 means by "them, depiction of the scene"; it's compound.

17 THE COURT: People always ask would it help to look at
18 something. I don't know how they know till they look at it.
19 Why don't you just show him something and say, Does it refresh
20 your recollection as to whether you gave these before or after
21 your deposition, whatever the question is.

22 MR. GALIPO: That's fine.

23 BY MR. GALIPO:

24 Q. Do you have a copy of your deposition with you?

25 A. No.

Jason - Cross

1 Q. I have the original here. I think I gave you a copy. I
2 don't know if I can open this.

3 THE COURT: Give it to the clerk. She'll open it.

4 MR. GALIPO: And then if I can use --

5 THE COURT: What I have is -- I'm not sure, but I have
6 a dated transcript from May 22 and one from May 8th. The
7 smaller is May 22. Which are you trying to refer to?

8 MR. GALIPO: The first one, May 8th.

9 THE COURT: And do you have a page you want to show
10 him? Just show it to him. Or some series of pages, whatever
11 it is.

12 Miss Lucero, do you have both volumes there?

13 MR. GALIPO: I have the right volume.

14 THE COURT: You can use that for now, and then give it
15 back to Miss Lucero at some point.

16 BY MR. GALIPO:

17 Q. Okay. I'm going to show you Page 20, actually starting on
18 19. If you just start on Page 19, Line 19, and read to
19 yourself that section and going onto the next page.

20 THE COURT: You want him to look at Pages 19 and 20?

21 MR. GALIPO: Correct.

22 THE COURT: And anything else?

23 MR. GALIPO: No, that's all.

24 THE COURT: Okay.

25 MR. LOEBS: Your Honor, I don't have the question in

Jason - Cross

1 mind.

2 THE COURT: He's not reading. He just wants the
3 witness to look at the deposition, discussion on 19 near the
4 bottom over to 20 and wherever it keeps going to.

5 MR. LOEBS: I'm not sure as to what he's asking.

6 THE COURT: He's trying to see if this refreshes the
7 witness's recollection as to something that will then be asked
8 after the witness looks at it.

9 BY MR. GALIPO:

10 Q. Have you had a chance to look at that, Mr. Jason?

11 A. Yes, I have.

12 Q. Does it refresh your recollection as to when -- strike
13 that.

14 Does it refresh your recollection as to whether you
15 provided Mr. Loebs what we looked at yesterday as Exhibit 184
16 before or after the date of your deposition?

17 A. No.

18 THE COURT: "When" would have been okay, too.

19 Q. Okay. Does it refresh your recollection as to when you
20 provided Exhibit 184 to Mr. Loebs?

21 A. No, it doesn't.

22 THE COURT: The answer is going to be the same. I
23 just didn't want you to think you couldn't say "when." What
24 you can't say is "that."

25 MR. GALIPO: Okay. Thank you.

Jason - Cross

1 THE COURT: Okay.

2 Q. Why did you provide Exhibit 184 to Mr. Loebbs?

3 A. I don't remember providing that, 184 and 185?

4 Q. The one we looked at yesterday that has a slightly
5 different angle to the door.

6 A. They're actually two different drawings, two different
7 graphics. They're not the same.

8 Q. What was your purpose in providing either one or both of
9 them to Mr. Loebbs?

10 A. I provided them to him -- I don't remember specifically
11 sending those graphics or giving it to him in any form because
12 those are, as I said, incomplete. But I did show him during
13 this two-and-a-half years various sort of works in progress.
14 Hey, this is what I'm doing, I'm going to have the car out here
15 and show this view, and that sort of thing. Just showing him
16 work that I've been doing. But it wasn't completed, what you
17 saw in 184 and 185 was not completed work.

18 Q. All right. Regarding the clothing, did you look at the
19 actual jeans in this case?

20 A. Yes, I did.

21 Q. Did they have blood on them?

22 A. Yes.

23 Q. On the front and on the back?

24 A. They had blood on the -- I have some notes on it. I could
25 look it up.

Jason - Cross

1 Q. Please do.

2 THE COURT: Then after the jeans question, you should
3 be looking for a place to break because we'll have been going a
4 little over an hour and a half.

5 A. Yes, I have here noted "jeans with belt" -- that's how they
6 were described on the evidence bag -- "dried blood apparently
7 inside of left leg and outside area near left front pocket."

8 Q. Okay. Any other blood that you noted on the jeans?

9 A. No. The jeans are black, so it's hard to see dried blood
10 on black. But I did see some.

11 Q. In your review of Dr. Smith's report, you noted a tan
12 cheesecloth that had blood on it?

13 A. I don't know anything about a cheesecloth.

14 Q. Do you recall in your review of Dr. Smith's report
15 reference to other articles of clothing in the car including
16 jeans that Mr. Boyd wasn't wearing that had blood on them?

17 MR. LOEBS: Objection, your Honor. Complete
18 misrepresentation of the record, and there's absolutely no
19 foundation.

20 BY MR. GALIPO:

21 Q. Well, you've already told us you relied on Dr. Smith's
22 report, correct?

23 A. Yes. I have it here.

24 Q. Okay. Do you recall the description of some blood on other
25 clothing that was found in the car?

Jason - Cross

1 A. I recall that there was other clothing. I don't remember
2 blood being described on the other objects.

3 Q. You have the report handy?

4 A. Yes, sir.

5 MR. GALIPO: May I approach, your Honor?

6 THE COURT: Yes.

7 Q. Is it okay if I look at your copy just for a moment,
8 Mr. Jason?

9 A. Yes. I have another copy here, so you can take that.

10 Q. Okay, sure. Looking at --

11 MR. LOEBS: Your Honor, if I could see what Mr. Galipo
12 is --

13 MR. GALIPO: This is Dr. Smith's report.

14 MR. LOEBS: Did we mark that as an exhibit?

15 THE COURT: I don't know that it's been marked. The
16 witness had it in his file and was looking at it. You can --
17 show him what you're looking at Mr. Galipo just for a moment,
18 and show Mr. Loebs so he knows exactly what it is you're
19 looking at.

20 THE WITNESS: That was handed to me by Mr. Galipo
21 previously.

22 THE COURT: Oh, it's not the witness's. That's why
23 maybe he has two copies. Yours and his. All right. So he's
24 now giving you your copy back. Okay. Of whatever it is.

1 BY MR. GALIPO:

2 Q. Are you looking at your copy of the report?

3 A. Yes, sir.

4 Q. Does it refresh your recollection as to whether there were
5 any jeans found in some other bags in the car that had blood --

6 MR. LOEBS: Your Honor, object to this. This is
7 completely improper for Mr. Galipo to be testifying about this
8 subject. If we could be heard outside of the presence of the
9 jury, if necessary, but this is completely improper.

10 THE COURT: I don't really know what the inquiry is at
11 this point. I suppose we could send the jury out. But....

12 MR. LOEBS: Lack of foundation; calls for speculation.

13 THE COURT: That's the objection. I gather --

14 MR. GALIPO: Let me rephrase the question.

15 BY MR. GALIPO:

16 Q. In looking at page -- are you looking at -- on the page
17 that references the date of 5/11/2004 in the second paragraph?

18 MR. LOEBS: Your Honor --

19 THE COURT: Let me put it this way: Dr. Smith's
20 report is hearsay. All right? So whatever's in it is
21 irrelevant and objectionable unless this witness formed some
22 opinion about something that he used Dr. Smith's report to
23 assist him with and relied on in some fashion. So, could be
24 all kinds of things that Dr. Smith said he looked at or did or
25 whatever, but that's just the report. It's hearsay.

Jason - Cross

1 MR. GALIPO: That's fine.

2 MR. LOEBS: And I request that the question be
3 stricken because there's an implication.

4 THE COURT: I don't even remember the exact form of
5 the question, ladies and gentlemen. But you've been instructed
6 earlier and will be again that insinuations or suggestions in
7 questions are not evidence. Only testimony.

8 BY MR. GALIPO:

9 Q. In reviewing the blood evidence in this case, Mr. Jason,
10 did you look at Dr. Smith's report to see if there were any
11 items of clothing found in the car that had blood on them?

12 A. No, I looked at the clothing that was worn by Mr. Boyd.

13 Q. Did you look at other items of clothing that were in
14 evidence that were found in the car to see if they had blood on
15 them as a potential source for any of the blood evidence you
16 found in the car?

17 A. No, I didn't.

18 Q. So as you sit here now, you don't know whether any of the
19 other items of clothing booked in evidence have blood on them
20 or not?

21 A. I didn't look at the other items. I just looked at the
22 clothing that he was wearing.

23 Q. That's fine. You would agree that the trajectory evidence
24 is consistent with Mr. Boyd being seated in a near-seated
25 position?

Jason - Cross

1 A. Yeah, seated or -- when you're going to sit down on the
2 rocker panel, you get from -- start at, pick a number, five
3 inches from where your bottom is going to touch the rocker
4 panel, and you go to four inches and you go to three inches,
5 two inches, one-and-a-half inches, a hundredth of an inch. So
6 yes, at some point he's essentially sitting, whether or not
7 he's in contact.

8 Q. So you would agree that in terms of the trajectories,
9 they're consistent with someone in the process of sitting down?

10 A. Sitting or near seated with the left hand near the floor.

11 Q. Okay. Now, with regards to this --

12 THE COURT: Mr. Galipo, you apparently haven't been
13 looking for a place to break.

14 MR. GALIPO: I think we can do it right now. I have
15 about 15 more minutes, but I'd rather just take a short break.

16 THE COURT: I think that would be preferable.

17 Ladies and gentlemen, let's break until 11:00 and come
18 back. Please remember my admonition. Thank you.

19 (The jury exited the courtroom)

20 (In open court; jury not present)

21 THE COURT: We're in recess.

22 MR. LOEBS: May I be heard on this issue?

23 THE COURT: Which issue?

24 MR. LOEBS: That has to do with the insinuation about
25 the blood on the jeans suggesting they're found in the car.

1 That was blood found on the officer's jeans that was booked
2 separately into evidence, and his implication that that was in
3 the vehicle is completely false. His question, he had no
4 foundation for it, no basis for it. He knew that was
5 incorrect.

6 MR. GALIPO: No, I didn't know.

7 MR. LOEBS: And he didn't ask Dr. Smith that question.

8 THE COURT: Blood was found on the officer's jeans?

9 MR. LOEBS: Yes, one of the officers that moved the
10 body away from the scene.

11 THE COURT: I don't know why you're getting so excited
12 here, but obviously you feel there's some inference the jurors
13 might draw that's unfavorable. Is it officer -- it's not
14 Officer Paine's jeans?

15 MR. LOEBS: No.

16 THE COURT: It's some other officer who's not here?

17 MR. LOEBS: Yes.

18 THE COURT: Okay. Well, I think that if the
19 suggestion was that there were other bloody items in the car
20 that could have been bloodied in the course of the shooting,
21 that would not be a proper inquiry to suggest that that was the
22 case, and there is at least an inference to that extent. And
23 there's been no reason for this witness to look at other
24 evidence if it was jeans from officers not standing nearby.

25 I could understand if somebody was trying to determine

1 how close an officer was to maybe take their jeans, that that
2 might suggest that they were standing close and somehow were
3 spattered by blood from the shooting. The officer's pants that
4 were collected, do you know which officer that was, Mr. Loeb's?

5 MR. LOEB'S: Yes. It's officer, I believe, it's
6 Damato, or if I recall who pulled his body away and that's how
7 he got the blood on his jeans.

8 THE COURT: Is there any indication that that officer
9 was part of the shooting in any way?

10 MR. LOEB'S: No. He witnessed some of the events, but
11 he was not, you know, in any way close proximity to Cammerin
12 Boyd.

13 THE COURT: Do you know why they took his jeans?

14 MR. LOEB'S: Just because they had blood on it from the
15 individual, he pulled them away. But the suggestion that it
16 was in the vehicle.

17 THE COURT: We got your point.

18 MR. GALIPO: I can just say that they were included in
19 the clothing in the autopsy report. I had no idea they were an
20 officer's jeans. So...

21 THE COURT: Let me ask this: Mr. Jason read
22 apparently Dr. Smith's report, didn't he?

23 MR. LOEB'S: Yes.

24 THE COURT: All right. Does he know the source of the
25 other pair of jeans from Dr. Smith's report; in other words,

1 does the report itself show that those jeans were taken from an
2 officer who removed the body or moved the body?

3 MR. LOEBS: The report itself doesn't specify. It
4 specifies how the bag of clothing they were in when they were
5 brought to him, but it's not -- it certainly doesn't say it was
6 clothing that was worn. It doesn't say it was clothing in the
7 SUV.

8 THE COURT: It doesn't say it's clothing taken from
9 the officer either apparently?

10 MR. LOEBS: No, it doesn't.

11 THE COURT: And how was Mr. Galipo to know that?

12 MR. LOEBS: Through discovery. We've been going on
13 this case for years.

14 THE COURT: Are you saying that it was made clear
15 during discovery?

16 MR. LOEBS: Yes.

17 THE COURT: He'll say he didn't know that.

18 MR. LOEBS: They looked at all the evidence, and it's
19 clearly marked on the evidence.

20 THE COURT: One of the problems is "they" is not
21 necessarily Mr. Galipo.

22 MR. LOEBS: He did.

23 THE COURT: All right. All I'm saying is I'm not
24 going to adjudicate whether he asked it in bad faith. I do
25 think that it's legitimate to clarify, if you can, the source.

1 Either by agreement or by some other way of not either having
2 to call whoever booked the evidence in, the officer whose pants
3 were removed from him. I don't know what they sent him home
4 in, or whatever else they did. So....

5 MR. GALIPO: If that is the source, which I never
6 knew, I'm willing to enter a stipulation, because I had no
7 information, personally, that those were the officer's jeans.

8 THE COURT: I'm not finding that Mr. Galipo
9 misrepresented something to the jury. So if you can arrive at
10 either a stipulation or just an agreement that it can be
11 elicited in some way from a witness, that's fine. As well.

12 MR. GALIPO: We'll work something out.

13 MR. LOEBS: I think we'll be able to arrive at a
14 stipulation.

15 THE COURT: I don't find this question was asked in
16 bad faith. There's a lot of evidence out there, and there was
17 more than one attorney who was dealing with it on behalf of the
18 plaintiffs. So let's just take a break, okay?

19 MR. LOEBS: It is a long case. I'm extremely tired.
20 So I just maybe got a little overexcited about that issue,
21 because I knew the evidence on this issue perhaps better than
22 Mr. Galipo. So we will be able to work something out.

23 THE COURT: I mean, not everybody has the command of
24 the evidence that you do, Mr. Loeb. I have a feeling that you
25 can put your hands on basically everything and say where it

1 came from. But not everybody is quite picturing it in that
2 fashion.

3 Just very briefly, Mr. Wiener, I've gone over the
4 instructions. Much better, but there are a couple of points I
5 do want to take up. They're not so much legal as just in the
6 manner in which the recording of what we talked about came out.
7 It wasn't exactly as I was thinking it would.

8 MR. WIENER: There was one thing that I did change I
9 wanted to alert the Court about in the tactical, the Billington
10 instruction.

11 THE COURT: Yeah, you changed a couple of things
12 there. One was or -- and you may be correct in that. You left
13 out "solely", though, and do want to talk about that. In any
14 event, let's take a break. We broke with the jury at a quarter
15 to.

16 Miss Lucero, can you tell the jurors they can have
17 five minutes, because we delayed here, and the reporter needs a
18 break, too.

19 Okay.

20 (Morning recess)

21 (In open court; jury not present)

22 THE COURT: Okay, we're back on track.

23 MR. GALIPO: With the Court's permission, right when
24 we start off, Mr. Loeb wants me to put that stipulation on the
25 record, and I'm going to.

1 THE COURT: That's fine. Thank you.

2 (The jury entered the courtroom)

3 THE COURT: Everyone's back.

4 Mr. Jason, you may resume the stand.

5 I think there's a brief stipulation that the parties
6 will be putting on the record at this point.

7 MR. GALIPO: After discussion between counsel, it's
8 agreed that a separate pair of jeans that did have blood on it
9 was supplied to Dr. Smith for evaluation and is mentioned in
10 his report. But that blood on those jeans came from an
11 officer, an officer's jeans who was involved in pulling the
12 body away from the scene. And as part of our stipulation, I
13 did not know that fact because it's not indicated in
14 Dr. Smith's report. But that is the source of the blood on the
15 other pair of jeans.

16 MR. LOEBS: That's agreed, your Honor.

17 THE COURT: In other words, that those jeans were not
18 in the vehicle at the time of the shooting?

19 MR. GALIPO: Correct.

20 THE COURT: The blood got on it at a later time.

21 Okay. All right. Thank you very much. We'll keep
22 going.

23 MR. GALIPO: Thank you.

24 BY MR. GALIPO:

25 Q. I want to conclude, Mr. Jason, by talking about the blood

Jason - cross

1 evidence, and in doing that, I'd like to put up a few exhibits
2 that we talked about previously. One is X5-02. Can you see
3 this exhibit from where you're at, Mr. Jason?

4 A. Yes, I can.

5 Q. Now, the blood that I'm -- in the area that I'm pointing to
6 on the floorboard, to the side of the bolt cover, in this area
7 here (indicating), do you see the blood that I'm referring to?

8 A. I do.

9 Q. You would consider that to be transferred blood, wouldn't
10 you?

11 A. I think most of it, if not all of it, is transferred.

12 Q. Some of the blood that I'm pointing to comes toward the
13 front of the vehicle; is that correct?

14 A. Yes.

15 Q. And then you also see at least in part transferred blood on
16 the bolt cover, correct?

17 A. Yes.

18 Q. And is it your opinion, Mr. Jason, that the transferred
19 blood that we see in this photograph could have been there
20 before Mr. Boyd was shot by Officer Paine?

21 A. Excuse me, did you ask me if it's possible?

22 Q. Yes.

23 A. Yes, it's possible.

24 Q. Okay. And you've already told us that you believe the
25 bloody napkin was there before Officer Paine shot Mr. Boyd, at

Jason - cross

1 least somewhere in the car?

2 A. Yes.

3 Q. And it's your opinion that the blood on the napkin did not
4 come from the shooting of Mr. Boyd by Officer Paine; is that
5 correct?

6 A. Not all of it, is my opinion. Some of it may have, a
7 little corner that's exposed. But I think most of the blood,
8 especially the big areas of deposit, are not associated with
9 this shooting event.

10 Q. Let me ask you this, Mr. Jason. Assume the following
11 facts: Assume, hypothetically, that Mr. Boyd's hand was struck
12 by the bullet before he exited the car. Can you at least make
13 that assumption?

14 A. Yes.

15 MR. LOEBS: Objection, vague as to use of the term
16 "exit."

17 Q. Before he got out of the car, before he opened the door and
18 got out of the car on Larch Way?

19 THE COURT: Okay.

20 A. I didn't understand that. I thought you meant before he
21 fell out -- I'm sorry, ask me again, please.

22 Q. Sure. Just hypothetically, assume that Mr. Boyd's hand was
23 struck by one of the bullets fired at the car before he opened
24 the door and got out of the car. Just for purposes of a
25 hypothetical. Can you have that hypothetical in mind?

Jason - cross

1 MR. LOEBS: Objection, vague; lack of foundation;
2 calls for speculation.

3 THE COURT: I'll sustain on lack of foundation.

4 Q. Is the blood on the napkin that you observed consistent
5 with coming in contact with a bloody hand?

6 A. It could be.

7 Q. Is the blood transfer that we see in this photograph
8 consistent with being in contact with a bloody hand?

9 A. That the transfer was made by a bloody hand? Yes.

10 Q. Is it also consistent with any other part of the body
11 that's bleeding that comes in contact?

12 MR. LOEBS: Objection, vague as to "any other part."

13 THE COURT: Overruled.

14 A. Yes.

15 Q. Okay. In terms of you had discussed in your testimony on
16 Thursday -- I'm looking for the right term -- there's back
17 spatter, correct?

18 A. There is a thing called back spatter, yes.

19 Q. And that would come from an entrance wound?

20 A. That's correct.

21 Q. And then from an exit wound, what is it referred to as?

22 A. Forward spatter.

23 Q. Forward spatter.

24 Okay. Now, let's talk about the exit wound to the
25 thigh. Do you have that in mind?

Jason - cross

1 A. Yes.

2 Q. Do you have an opinion whether that would have created some
3 forward spatter in this case?

4 A. It would, yes. It would, however, in this case, it would
5 be probably less than -- less than would be expected from a
6 body that's not clothed and not wearing what I would call a
7 compression garment, this tight neoprene whatever it was that
8 he was wearing.

9 Q. Do you see any evidence in this exhibit of anything that
10 you associate with forward spatter from the exit wound to the
11 thigh?

12 A. No.

13 Q. Now, you have in your depiction in U-502 Mr. Boyd sitting
14 on that area of the floorboard, correct?

15 MR. LOEBS: U-502? I'm not sure.

16 THE COURT: I think it's just U-5.

17 MR. GALIPO: Yes, you're right. I've got so many
18 numbers in my head. U-5, yes.

19 Q. You have him sitting in that position in between the front
20 of the seat, in that area, correct?

21 A. In that area that's there, yes.

22 Q. His right side in that picture you have closer to the door?

23 MR. LOEBS: Objection, vague.

24 THE COURT: As to closer than what?

25 Q. Let me get it. Here it is. You have him as positioned as

Jason - cross

1 we see it in this photograph, correct?

2 A. I do, yes.

3 Q. Now, the speed of the bullet that hit him in the abdomen
4 would have been greater than the speed of the bullet that hit
5 him in the hand, correct?

6 A. Yes.

7 Q. That's because the speed of the bullet to the hand was
8 decreased when it went through the thigh?

9 A. Yes.

10 Q. Okay. And let's assume he wasn't wearing a shirt at the
11 time he was shot. Do you have that in mind?

12 A. Yes, sir.

13 Q. Did you see any blood evidence in the car that would relate
14 to him being in the position you have in U-5 where blood would
15 have been left from the abdomen somewhere in the car?

16 MR. LOEBS: Objection, your Honor, incomplete
17 hypothetical; argumentative; lacking foundation.

18 THE COURT: I'm not sure I understand the question. I
19 will overrule unless you want to reframe it.

20 MR. GALIPO: I'll break it down.

21 THE COURT: Okay.

22 Q. Okay. Well, first of all, would you expect there to be at
23 least some projected blood from the entrance wound on the
24 abdomen given that the velocity of the bullet when it hit the
25 abdomen was greater than the velocity of the bullet when it hit

Jason - cross

1 the hand?

2 MR. LOEBS: Object to the question as being vague and
3 compound.

4 THE COURT: I think that it is compound. In other
5 words, he might or might not expect spatter, and if he did, he
6 might or might not expect it for the reasons you said. So...

7 MR. GALIPO: I'll break it down.

8 THE COURT: Okay.

9 BY MR. GALIPO:

10 Q. Do you -- would you expect to have high velocity blood
11 spatter from a bullet striking the abdomen as we have in this
12 case?

13 MR. LOEBS: Objection, vague as to "have in this
14 case."

15 THE COURT: I will overrule.

16 A. I would expect there to be some, yes.

17 Q. Did you see any evidence of any high velocity blood spatter
18 that you associated with the abdomen wound in any of the photos
19 that you looked at?

20 A. No, but I wouldn't expect to find it in that configuration.
21 I would only -- that back spatter would only travel a few
22 inches, and there wouldn't be very much.

23 Q. Okay. You indicated three to five inches in your
24 deposition, correct?

25 A. That's the maximum distance.

Jason - cross

1 Q. Now, would you expect that wound to bleed immediately, the
2 abdomen wound?

3 A. There would be blood, yes.

4 Q. Did you see any evidence of drip blood in the car from that
5 wound?

6 A. No.

7 Q. Did you see any evidence of drip blood from any of the
8 photos directly below where the driver's door area is from that
9 wound?

10 A. It would be very hard to tell because that's black asphalt.
11 I did not note any, but I don't have good pictures of that
12 area. I didn't have good pictures to examine.

13 Q. Okay. Is it your opinion that some of the blood evidence
14 in this case came from the exit wound of the thigh wound?

15 A. No.

16 Q. Is there anything that you saw in looking at the photos of
17 the blood that led you to believe that's evidence of forward
18 spatter from the exit wound to the thigh?

19 MR. LOEBS: Objection, vague. As to forward spatter
20 from the exit wound.

21 THE COURT: Overruled.

22 A. I think you're asking me the same question, do I believe
23 any of this blood evidence is from forward spatter from the
24 exit wound? Is that what you're asking me?

25 Q. Let me make sure I have it right. Forward spatter comes

Jason - cross

1 from the exit wound, correct?

2 A. That's correct.

3 Q. So yes, I'm wondering if -- I understand your testimony
4 that you believe the blood evidence we're seeing in this photo
5 is not from forward spatter from the thigh exit, correct?

6 A. Correct.

7 Q. I'm wondering, you looked at the car yourself on at least
8 two occasions, correct?

9 A. Yes.

10 Q. Did you see anything anywhere that you believed was
11 evidence of forward spatter blood evidence from the exit wound
12 to the thigh?

13 A. No.

14 Q. And when you looked in the car, did you see any evidence of
15 any back spatter blood that you associated with the entrance
16 wound to the abdomen?

17 A. No.

18 Q. Now, in this case, looking at the transferred blood that we
19 see in X5-02, there's some different distinct patterns that can
20 be seen in this photograph; is that correct?

21 A. Well, there are different shapes, yes.

22 Q. One pattern of the transferred blood appears to go in the
23 direction of -- going from the front of the seat towards the
24 front of the vehicle, as I'm moving my pen; is that correct?

25 A. I would have to disagree. You really can't tell

Jason - cross

1 directionality. There's a linear distribution of blood, but
2 you can't tell if it's upward or downward, as we're looking at
3 the picture.

4 Q. Okay. But you can tell it either had to be from -- looking
5 at the picture, from up to down or down to up?

6 A. I'm sorry, say that again.

7 Q. You've indicated, if I understood your testimony correctly,
8 that this transfer would be made by direct contact with, for
9 example, the hand?

10 A. Yes.

11 MR. LOEBS: Objection, vague.

12 THE COURT: Overruled.

13 Q. Okay. So when you say you can't tell directionality, is
14 what you're saying you can't tell if it went in this picture
15 from top to bottom or bottom to top in terms of which way the
16 object was moving on the surface?

17 A. That's correct.

18 Q. But you can tell that at least in looking at this photo
19 it's of a vertical nature, that particular pattern?

20 A. Well, there's a linear distribution, so it's consistent
21 with the hand or some bloody object moving upward or downward
22 along that linear distribution.

23 Q. Okay. And that's the -- so that linear distribution is an
24 up or down, correct?

25 A. It's -- the physical evidence is consistent with that. The

Jason - cross

1 blood deposits are consistent with that movement, yes.

2 Q. You then have a separate linear distribution of the
3 transfer that goes side to side; is that correct?

4 A. Yes.

5 Q. Now, in this case, your opinion is that Mr. Boyd's hand was
6 approximately a couple inches above that bolt cover when it was
7 by the bullet; is that your opinion?

8 A. Some portion of the hand. The part that was struck by the
9 bullet. And his thumb was also lacerated by the bullet, so I
10 believe some of those bloody areas were above the bolt cover.

11 Q. So to be more specific, your opinion is that the area of
12 his hand that was struck by the bullet would have been
13 approximately two inches above the bolt cover?

14 A. I don't say two inches. Several inches, I'm not sure how
15 high.

16 Q. It has to be close enough -- strike that.

17 If you believe there's high velocity blood spatter on
18 the bolt cover, it would have to be close enough to get the
19 blood spatter, correct?

20 A. Yes.

21 Q. Are you comfortable with between three and five inches, or
22 do you have another estimate in mind?

23 A. Within two to five inches, would probably be a reasonable
24 distance.

25 Q. But in your opinion, the area of the hand struck by the

Jason - cross

1 bullet was not touching the bolt cover at that time; is that
2 your opinion?

3 A. When you say "the area of the hand."

4 Q. The area of the hand that was struck by the bullet, in your
5 opinion, was not in physical contact or touching the bolt cover
6 at the time it was struck; is that your opinion?

7 A. It's hard to define. Some portion of the hand could be in
8 contact with the --

9 Q. I'm talking about the area that was struck by the bullet.

10 A. The bullet, the defect, the hole that lacerated the area in
11 the thumb?

12 Q. Yes.

13 A. I don't think they were in contact with the bolt cover.

14 Q. That's your opinion, correct?

15 A. Yes.

16 Q. So if the hand was in that position when it was struck by
17 the bullet, the hand, after it was struck, would have had to
18 have gone down, at least the bleeding portion of the hand would
19 have had to have gone down to the surface of the floorboard; is
20 that correct?

21 A. Yes.

22 Q. It then would have had to make some movement of either up
23 to down or down to up on this photograph to make the -- that
24 linear blood pattern; is that correct?

25 A. Yes.

Jason - cross

1 Q. It then would have had to make some movement side to side
2 to make this other pattern, including the transfer blood, on
3 the bolt cover?

4 A. Well, you're indicating with your hand something different.
5 I agree that there was some side to side, if I look at this
6 picture, movement across the bolt cover.

7 Q. Okay. So it's your opinion that when Mr. Boyd was struck
8 by the bullet, the portion of his hand struck would have been
9 above the bolt cover. Am I correct so far?

10 A. Yes.

11 Q. His hand then, including the bleeding portion, had to go
12 down to the floorboard. Correct?

13 A. Yes.

14 Q. Then it's your opinion that his hand went from basically
15 the area in front of the seat towards the front of the vehicle?

16 A. Once again, I don't know if he started slightly behind or
17 below and moved upward, or it started above and moved downward.

18 Q. Okay. One of the two.

19 A. Yes.

20 Q. His hand then would have had, after making that movement,
21 had then to go side to side, and in this photograph, towards
22 the exit or the bolt cover; is that correct?

23 A. The physical evidence is consistent with that motion, yes.

24 Q. Well, in order for his hand to leave all this transfer that
25 we see, he'd have to, after being shot, make contact with the

Jason - cross

1 floorboard and at least have two different motions, correct?

2 A. Two different directional vectors, yes.

3 Q. And it's your opinion that he did all that as he was
4 falling to the ground after being shot in the abdomen?

5 A. It's my opinion that it's consistent with that, yes.

6 Q. Let me ask you this, Mr. Jason: In looking at this
7 picture, it's your -- strike that.

8 Do you see any blood from the area of this bolt cover
9 going to the right?

10 A. Yes.

11 Q. You see blood in between where I am and towards the rocker
12 panel?

13 A. Show me where you're indicating, please?

14 Q. Well, you see at some point where the carpeting material
15 ends?

16 A. Yes.

17 Q. When you say "rocker panel," at least as you've been using
18 the term, are you referring to this lighter gray area?

19 A. Yes, the unupholstered area, the uncarpeted area, yes.

20 Q. First of all, do you see any blood on the rocker panel?

21 A. I do not.

22 Q. Wouldn't you expect if this bleeding hand is leaving the
23 car as you described and is coming across the rocker panel that
24 there would be blood on the rocker panel?

25 A. Not necessarily. But it depends, because the -- first of

Jason - cross

1 all, the bolt cover is raised. So the hand would have to be
2 higher than the level of the rocker panel when it's coming
3 across the bolt cover. And it could have been pulled across at
4 a higher -- starting to come at an increasingly higher angle.

5 Q. Is it your opinion that --

6 MR. LOEBS: Your Honor, objection. I think the
7 witness hadn't finished his answer.

8 THE COURT: Not clear if you had finished, Mr. Jason.
9 Have you?

10 THE WITNESS: Um, yes. I'm sorry, yes.

11 THE COURT: Okay. Then go ahead.

12 BY MR. GALIPO:

13 Q. Is it your opinion that after the hand passed the bolt
14 cover it stopped bleeding?

15 A. No. If it was bleeding before, it would have continued to
16 bleed.

17 Q. Did you look when you examined the car in person to see
18 whether there was blood anywhere on that rocker panel?

19 A. Yes.

20 Q. Could you see any?

21 A. No.

22 Q. Did you look to the side to see if any blood was on the
23 side of the rocker panel?

24 A. Yes.

25 Q. Did you see any?

Jason - cross

1 A. I did not.

2 Q. Did you look to see, in looking at any of the evidence,
3 whether there was any trail of blood leaving the open driver's
4 door area where you believe he was up to the area where his
5 body came to rest?

6 A. On the asphalt? I only have the crime scene pictures, and
7 they don't provide that detail.

8 Q. Do you recall at the time of your deposition telling me
9 that you thought some of the blood evidence was from the thigh?

10 A. I don't recall that. I said it's possible some of it's
11 from the thigh.

12 Q. Are you now saying it's not possible?

13 A. I'm saying it's possible. It's hard to make out, all of
14 the discrete deposits there, particularly the nature of the
15 carpeting, which interrupts the pattern or the shape. So it's
16 possible that some of it was from the thigh. But I think there
17 would be very little blood from the thigh, because of the fact
18 that he was wearing clothing, loose clothing, and that would
19 attract a lot of it. The forward spatter doesn't come out as
20 an individual particle, it comes out in a cone shape, and if
21 the clothing is a little bit distant from the skin surface, not
22 much of that cone will get out the hole with the bullet.

23 Q. Well, it's true, is it not, Mr. Jason, that high velocity
24 blood spatter in general comes out in some cone shape?

25 A. Yes, it begins as a cone. Depending on the source, but

Jason - cross

1 yes.

2 Q. And, therefore, it leaves a specific pattern on the object
3 it strikes; isn't that true?

4 A. It can. Depending on the distance and some other factors.

5 Q. You don't see in this case what you would characterize as a
6 classic example of high velocity blood spatter with a fine mist
7 and a pattern, do you?

8 A. I do see elements of it, yes.

9 Q. Elements?

10 A. Elements, yes. If this were a white metal or cardboard
11 surface all around where you could actually see all the blood
12 that was distributed, I think you'd have a much more clear
13 view.

14 Q. There was also some blood on a couple of the wires
15 underneath the seat; is that true?

16 A. Yes.

17 Q. You don't characterize that as high velocity blood spatter,
18 do you?

19 A. No.

20 Q. Well, how did you think the blood got on the wires? Was it
21 dripped?

22 A. Possibly. But I think the hand -- the evidence is
23 consistent with the hand, the bloody hand touching the wires.
24 The wire was not, as is shown here, the wire is actually out on
25 top of the bolt cover or in front of the bolt cover in most

Jason - cross

1 contemporaneous pictures.

2 Q. The little specks that that you see on that blowup of the
3 bolt cover, do you specifically even know if those little
4 specks are blood?

5 A. They're consistent with blood.

6 Q. Well, there was no testing done of those specks to
7 determine whether they are blood, would you agree?

8 A. On those individual specks, no, they're too important as
9 evidence to remove.

10 Q. Was there any testing on the blood on the bolt cover, if
11 you're aware?

12 MR. LOEBS: There's a stipulation to the blood on the
13 floor.

14 THE COURT: Well, in any event.

15 MR. GALIPO: But not the bolt cover.

16 THE COURT: I thought you were just asking him about
17 the bolt cover.

18 MR. GALIPO: That's all I was.

19 THE COURT: But then it sounded like you were now
20 going to the bolt cover, but I think you were already at the
21 bolt cover.

22 MR. GALIPO: I'm talking about the bolt cover.

23 THE COURT: Okay.

24 MR. GALIPO: I'll move on.

25 THE COURT: I'm not sustaining any objection. I just

Jason - cross

1 maybe misunderstood your question.

2 BY MR. GALIPO:

3 Q. Do you know specifically whether any blood test was taken
4 of the blood on the bolt cover?

5 A. I believe there was blood test of the blood surrounding the
6 bolt cover.

7 MR. GALIPO: If I could just have a minute to look at
8 my notes, your Honor.

9 Q. Medium velocity blood spatter is considered between
10 1 millimeter and 3 millimeters, correct, generally?

11 A. In general. But there'll be other sizes. You never get
12 one size from any type of projection. You get a variety of
13 sizes. But if you have certain ones like very small ones,
14 those are high energy, the high energy mechanism is involved.

15 Q. You would agree that medium velocity stains are not
16 associated with a bullet strike?

17 A. Are you talking about the size of them, when you say
18 "medium"?

19 Q. Without getting into the specifics, it's really a matter of
20 how much energy is being produced, correct?

21 A. Well, the -- no, the energy isn't produced. The amount of
22 energy involved in the interaction of the bullet, the
23 projectile and the human tissue, you will have -- will have a
24 relationship with the type of spatter, the size and
25 distribution.

Jason - cross

1 Q. And the amount of energy is related to the speed of the
2 impacting bullet, correct?

3 A. It is, yes.

4 Q. And normal speed is in excess of thousand feet per second?

5 A. This bullet is about 1100 feet per second.

6 Q. For anything a hundred feet per second or over, that would
7 create potentially high velocity blood spatter?

8 A. That could, yes.

9 Q. Less than a hundred feet per second you're talking about
10 medium velocity blood spatter?

11 A. Yes.

12 Q. And you would agree if it's less than a hundred feet per
13 second, it's most likely not a bullet?

14 MR. LOEBS: Objection, vague.

15 THE COURT: Overruled.

16 A. No, the minimum size, the smallest size of the spatter will
17 help determine what the mechanism was, because in a gunshot,
18 even on a very high velocity gun, .223 round, hitting my hand,
19 will produce -- if I was up against the wall, my hand was
20 against the wall, a large amount of spatter. There would be
21 big drops, there would be small ones, there would be bits of
22 tissue, there'd be a big combination. But you'd have very,
23 very small ones. And the very, very small ones, the
24 sub-1 millimeter, you'd say, Ah, it was a high energy mechanism
25 associated with this.

Jason - cross

1 Q. I understand.

2 A. But you'll have medium velocity sized spatters as well.

3 Q. But you would agree if the speed of the impacting object
4 was less than a hundred feet per second, you would not expect
5 high velocity spatter?

6 A. Well, once again, we don't really use speed any more
7 because you can have a power tool to cause this, like a drill
8 or electric saw, people have been injured. So there's not a
9 real velocity component, it's just the energy.

10 Q. Let me ask you this last question: You would agree that
11 you don't see any specific pattern of these high velocity blood
12 particles that you're referring to on the bolt cover?

13 A. I do see a pattern of high -- consistent with high velocity
14 or high energy impact spatter.

15 Q. Can you show us the pattern on this exhibit?

16 A. Yeah, there's one that's distinct on there. You want me to
17 come down?

18 Q. Sure.

19 THE COURT: If you have a pointer.

20 THE WITNESS: (Indicating)

21 THE COURT: Yes.

22 THE WITNESS: There's a linear distribution of very
23 small particles in this area where I'm indicating here.

24 BY MR. GALIPO:

25 Q. Can you see them as you're looking at this photograph?

Jason - cross

1 A. Yes.

2 Q. And that's the pattern that you were referring to?

3 A. Yes.

4 MR. GALIPO: Thank you. That's all I have, your
5 Honor.

6 Thank you. Redirect, Mr. Loeb?

7 REDIRECT EXAMINATION

8 BY MR. LOEB:

9 Q. Mr. Jason, you were asked on cross-examination some
10 questions about your meetings with me related to this case. Do
11 you remember that?

12 A. Yes.

13 Q. And the number of meetings and the period of time in which
14 you worked on this case. Do you have that in mind?

15 A. Yes.

16 Q. Is there anything unusual at all in your meeting with an
17 attorney to discuss the case?

18 A. No.

19 Q. And those meetings are in part you educating me as to the
20 basis for your opinions?

21 A. Some of it, yes.

22 Q. Okay. And also you needed to review some evidence and the
23 vehicle; is that correct?

24 A. Yes, and you were the one that gets me into the property
25 room and so on.

Jason - Redirect

1 Q. Okay. And with respect to your opinions in this case, are
2 they your own, or is it something I told you to say?

3 A. They're my own opinions.

4 Q. And the basis for your opinions, you have been and are
5 prepared to discuss that with the jury?

6 A. Oh, yes.

7 Q. Now, you were asked some questions, maybe for a couple of
8 hours yesterday, about some exhibits that have been marked for
9 identification but are not in evidence, 184 and 185. Do you
10 have those exhibits in mind?

11 A. I do.

12 Q. And at the time of your deposition -- or, excuse me, when
13 you were being asked questions, you were asked if you could
14 discuss the differences between those exhibits and the final
15 exhibit you prepared with respect to your opinions in this
16 case.

17 A. Yes.

18 Q. I know you talked about some of the things in terms of the
19 colors and other things like that. In reviewing those -- first
20 of all, what were 184 and 185, just in general?

21 A. Those were just interim preliminary drawings that I had
22 been working on. It was not the completed drawings. So there
23 were -- it was just a start. And actually I looked up last
24 night to see if I could find those because I usually don't keep
25 them because they have no real significance. They're just, you

Jason - Redirect

1 know, they are just in-between things, as I'm progressing.

2 I did find one with the car in the -- the SUV on Larch
3 Way with all doors closed. That's just part of my process. I
4 start dealing with certain things and I work on them.

5 Q. Specifically talking about the 184 and 185, are those even
6 the same version?

7 A. No, those are two separate scenes, they represent two
8 separate states of work.

9 Q. Now, other than just talking about the differences in
10 colors and those sorts of things, were there other differences
11 in there in terms of the dimensions between themselves and each
12 other and your final work?

13 A. Oh, yes. When I went there last night, there were some
14 things that were very significant, like the width of the
15 sidewalk on the south side was totally inaccurate. That's
16 something I corrected later on. It's hard to get that
17 dimension because there's a curbed area to the sidewalk, so I
18 had done something wrong, I later corrected that. The police
19 car -- police cars shown behind the SUV, I believe were in
20 different locations. One of them even had the -- had emergency
21 lights on top of the police car. One of the light bars was
22 actually on the windshield. It was just some error that I'd
23 made. There were also -- I know a tree, at least one tree was
24 in the wrong location. I believe there were other elements
25 like -- subtle elements, but significant ones, about the

1 location of the parking stalls relative to the doors.

2 Q. How about with respect to like in terms of just comparing
3 just in general these versions with your final version, how
4 about the locations of the apartments? Are those different as
5 well?

6 A. Yeah, the apartments, first of all, the apartment numbers
7 aren't indicated on the 184 and 185. At all. So it's really
8 hard to tell what apartment you're dealing with.

9 Q. And the various cars in relation to each other, those are
10 in different locations than your final product?

11 A. Yeah, the cars, the parked cars were changed quite a bit,
12 not just the color but the size of them. I think the
13 orientation of one of them. I can't remember now. There were
14 a lot of differences.

15 Q. How about the orientation of the SUV in relation to other
16 vehicles? Is that different as well?

17 A. Yes, the SUV is in different locations on 184 compared to
18 185, and then compare both of them to my final product and,
19 yes, they're different.

20 Q. Let me just ask you this then about 184 and 185: Do those
21 exhibits have any significance at all to your opinions or
22 testimony in this case?

23 MR. GALIPO: I'll object as vague and ambiguous as to
24 "significance"; calls for speculation.

25 THE COURT: I'll overrule. Overruled.

1 A. No, they don't.

2 Q. Are those exhibits -- we're talking about 184 and 185. Are
3 those a fair and accurate representation by you of the scene?

4 A. They're not a fair and accurate representation, no.

5 Q. Now, you did do something that you believe to be a fair and
6 accurate representation as best you can determine from the
7 photographs, from measurements, from exhibits to the scene?

8 A. That's correct.

9 Q. We've marked as V5-02 the large version of that, and I
10 think V5-02(a) as the small version, at least the close-up. Is
11 that -- do you have that in mind?

12 A. I don't know the numbers myself, but I'll accept that.

13 THE COURT: I think 5-01 is the broader blowup. 5-02
14 is the more close-up blowup. And then there should be a
15 5-01(a) and 5-02(a) that are the smaller pictures from which
16 the blowups were made respectively.

17 BY MR. LOEBS:

18 Q. V5-02 is the more close picture; is that correct?

19 MR. GALIPO: I'll object as lacking foundation as to
20 the angle of the door when compared to the crime scene photos.

21 THE COURT: I don't think the witness has tried to use
22 the angle as definitive here, but if there's any question about
23 it, Mr. Loebs should clear that up.

24 Q. Looking at V5-02, the blowup of this smaller version, the
25 same thing, do you have this exhibit in mind?

1 A. Yes.

2 Q. And did you prepare this?

3 A. Yes.

4 Q. And what does this represent? What is it?

5 A. That's an overhead view of Larch Way with the vehicles in
6 place as indicated on the Sergeant Riggle crime scene diagram.

7 Q. And how did you put this exhibit together?

8 A. I first went to the scene and took measurements, took
9 photos, then I reviewed the crime scene pictures and the
10 diagram I just described, and using all of that, and several
11 more trips back there, to that location, to verify things or
12 double-check things or get additional measurements, I was able
13 to essentially draw this in the computer.

14 Q. And with respect to the vehicles in relation to each other,
15 is it intended to be proportional?

16 A. Yes.

17 Q. And you did do that?

18 A. Proportional, yes.

19 Q. Now, with respect to the door that we see open on the SUV,
20 I want you to assume that before the crime scene photographs
21 that you looked at were taken, that the door had been closed to
22 secure the weapon that was found inside the door; and just for
23 the purpose of the photographs, the door was opened by the
24 photographer, pictures were taken, just for the purpose of
25 taking pictures without the intention to duplicate in any way

Jason - Redirect

1 the position of the way the door was at the time of the
2 incident; and then later on the vehicle was removed. Do you
3 have those facts in mind?

4 A. Yes.

5 Q. When you were attempting to do your best to try to prepare
6 a diagram of the scene with respect to the door being open and
7 closed on the SUV, as shown in Exhibit V5-02, were you
8 intending to depict the door as it was shown in the crime scene
9 photographs?

10 A. No.

11 Q. And you have given some opinions about the door and the
12 door angle, correct? You talked about that somewhat yesterday?

13 A. Yes.

14 Q. With respect to the door as is shown in this exhibit, what
15 in general on the SUV is that intending to depict?

16 A. That the door is open. I can't say how much it was open
17 during the shooting incident. But I know the door was open to
18 some degree. And that just shows the door being open.

19 MR. LOEBS: Your Honor, we offer Exhibit V5-02 and
20 V5-01 and the smaller versions V5-02(a) and V5-02(b) in
21 evidence.

22 THE COURT: V5-01 and 502 were admitted earlier
23 without objection. But at that time Mr. Galipo thought that
24 the -- there was a different original version from which it was
25 made. If there is any objection at this time, I'll -- I'd like

Jason - Redirect

1 to hear what the objection is.

2 MR. GALIPO: Foundational objection regarding the
3 angle of the door.

4 THE COURT: Because it's been made clear to the jury
5 that the angle of the door was not intended in the picture to
6 be the same as the angle of the door at the time of the
7 shooting but just to show a door open, and that all of the
8 other dimensions have been described as having been calculated,
9 I'm going to overrule the objection and allow the exhibit. And
10 I don't think there's any confusion because it's made -- been
11 made clear what part of it is not intended to be calculated.

12 MR. GALIPO: Another foundational objection is we
13 don't even know if the door can open as far as is shown in that
14 photo.

15 THE COURT: Well, that's nothing that I frankly can
16 recognize as a recognizable objection, shall we say, but more
17 of an argument, so -- overruled.

18 (Defendants' Exhibits V5-02(a) and V5-02(b) received
19 in evidence)

20 BY MR. LOEBS:

21 Q. Very quickly, Mr. Jason, just in general you talked
22 yesterday about when you were asked to estimate how far this
23 door was opened, you said about 70 degrees?

24 A. Yes.

25 THE COURT: In the picture.

1 Q. Yes, in the picture.

2 A. Yes.

3 Q. Do you have an understanding as to whether this specific
4 SUV that you looked at, whether that door when it's fully
5 opened is open at about 70 degrees?

6 A. Yes.

7 Q. And what's your understanding?

8 A. I measured the door at full rotation as about 70, 72
9 degrees, fully open. That's relative to the long axis of the
10 vehicle.

11 Q. Now, just real quickly, we have the other Exhibit V5-01
12 that we showed somewhat more briefly. Can you explain what
13 this is in relation to Exhibit V5-02?

14 A. Well, that's the same scene that you saw previously, it's
15 just looking at it from a wider point of view so you see the
16 entire Larch Way Street. There are missing cars in there
17 because I only have data on cars in the immediate area. I
18 don't have any other data.

19 Q. So we're talking about to the left of the last police car,
20 all this area, you weren't intending to depict that as
21 completely empty at the time of the incident?

22 A. That's correct. I don't know what was parked there.

23 Q. And similarly to the right of the last blue car, you
24 weren't intending to depict that area as empty either; is that
25 correct?

Jason - Redirect

1 A. I depicted it empty, but I don't have it -- because I don't
2 have any data as to what was or wasn't there.

3 Q. Okay. And this would otherwise be just a larger version of
4 the same thing that Exhibit V5-02 is in terms of the work you
5 did in measurements, correct?

6 A. Yes.

7 THE COURT: Just describing it for the record, then
8 the witness, as I understand it, is not trying to depict the
9 state of the automobiles on the south side of the street. The
10 side of the street away from where the shooting occurred?

11 THE WITNESS: Yes.

12 THE COURT: And he's not trying to depict the state of
13 the other automobiles to the east of the area where the
14 shooting occurred; in other words, going down towards Laguna on
15 the same side of the street?

16 THE WITNESS: Yes, ma'am.

17 BY MR. LOEBS:

18 Q. Did you depict at least one vehicle on the south side?

19 A. Yes, because that was in Sergeant Riggle's sketch.

20 Q. And we talked before about some work you did on
21 Exhibit F-9. You talked somewhat about this shadow SUV shown
22 in the middle and what the yellow line's intended to represent.

23 A. I did.

24 Q. Other than that, the yellow line and the shadowed SUV,
25 would this be -- F-9, would this be the same information as

Jason - Redirect

1 contained on V5-02; in other words, the same diagram, you just
2 added this additional information?

3 A. Yes.

4 Q. And just really quickly, with respect to Exhibit F-9, what
5 you were intending to depict with this exhibit in terms of the
6 shadow SUV and the yellow line and the position of the door,
7 you weren't intending to depict that as a reconstruction of the
8 crime scene, correct?

9 MR. GALIPO: I'll object as vague and ambiguous.

10 MR. LOEBS: I'll rephrase.

11 Q. Let me ask this: With respect to the shadow vehicle and
12 the line through the SUV, is this otherwise the same as
13 Exhibit V5-02?

14 A. Yes.

15 MR. LOEBS: Your Honor, we offer Exhibit F-9 into
16 evidence.

17 THE COURT: Was that not admitted earlier?

18 MR. LOEBS: I know it was discussed. I can't
19 remember.

20 THE COURT: I'll look and see. This was F-9?

21 MR. LOEBS: F-9.

22 THE COURT: So that would be an added exhibit.

23 F-9 was not admitted. Is there an objection?

24 MR. GALIPO: Yes, your Honor. Specifically with
25 regards to the angle.

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1 THE COURT: The door again?

2 MR. GALIPO: Of that door. I have a protractor here
3 if you want to look at it.

4 THE COURT: Can we clarify again that the witness was
5 not trying to replicate the angle of the door during the course
6 of the shooting?

7 BY MR. LOEBS:

8 Q. Were you intending to replicate the angle of the door as it
9 was photographed by the inspectors of the crime scene through
10 this exhibit?

11 A. No, I was not. I did not.

12 THE COURT: Or to my understanding, in any other way.
13 In other words, does this refresh some calculation on his part.

14 Q. With respect to the door being opened, does it reflect --
15 as it's depicted in this exhibit, does it reflect in any way
16 your opinion as to the ability of the door to open, regardless
17 of how it's photographed at the crime scene?

18 A. The fact that the door does open that way, that's about the
19 extent of it. Not the actual angle. I don't know what the
20 angle was during the shooting.

21 Q. Okay.

22 MR. GALIPO: Well --

23 THE COURT: But you can come back and do it with a
24 protractor afterwards.

25 MR. GALIPO: Thank you.

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1 THE COURT: If you want to object, no foundation, the
2 door's not based on any calculation, you can do that. But it's
3 clear to the jury that that is the case, and the rest of it is
4 relevant in that respect, and I'll overrule.

5 So F-9 will be admitted.

6 (Defendants' Exhibit F-9 received in evidence)

7 BY MR. LOEBS:

8 Q. Just a few more questions about some of these graphics.
9 Looking at V5-02 in doing this work, you talked before about
10 some of the other work you'd done to illustrate your opinions,
11 how precise can we be in drawing any very specific conclusions
12 using this diagram with measurements and so forth?

13 MR. GALIPO: I'll object as vague and ambiguous as to
14 what conclusions.

15 THE COURT: I'll overrule.

16 A. This can be used to visually represent or visually
17 understand the relationship of the different objects, the
18 parked cars, the buildings, the sidewalk and so on. And the
19 location of the SUV. I hate to say lesser things about my own
20 work, but as the Judge pointed out, what this really is is sort
21 of a jazzed-up crime scene sketch. And it represents the crime
22 scene with the data that's available in a more detailed and
23 accurate form than the actual crime scene sketch, which is not
24 to scale, and this is. But it's not -- you can't be splitting
25 hairs in there about what -- about the fine dimensions. It's

1 just a sketch. A fancy one, but it's a sketch.

2 Q. Let me ask you a couple of questions about the door angle
3 issue. In your work in this case, how did you approach your
4 task with respect to having -- trying to evaluate the shooting
5 incident and the relationship between the individual in the SUV
6 and the way in which the door was opened?

7 A. Well, looked at the physical evidence and then, starting
8 with the -- not that I started this way, but going to the
9 foundational elements, is the blood evidence in the car. And
10 then the wounds on the decedent. And there are only certain
11 physical characteristics of the car that are consistent with
12 his wound, his wound paths, and the blood distribution.

13 Q. Now, did you do an analysis of this case with respect to
14 two possible positions in which the door could be open in terms
15 of being fully opened and opened detent at 55 degrees?

16 MR. GALIPO: I'll object as vague as to point in time
17 and not disclosed under 26. I'm not sure I understand the
18 question.

19 THE COURT: I'm not sure I understand the question.
20 Did you do an analysis of the case?

21 Q. Is part of your analysis in this case as part of his body
22 position in the car when the shots were fired, did you look at
23 the degree at which the door could be opened to accommodate
24 those shots?

25 A. Yes.

1 Q. That's part of the work you did in this case?

2 A. Yes.

3 Q. You talked about the door having different detents. What
4 do you mean by that?

5 A. Well, there are -- you might think of the door having four
6 positions. One is closed. And then you can open it to the
7 first detent, where the lock open -- not lock, but stop. And
8 that's at 30 degrees. And then there's another detent where it
9 will naturally mechanically come to rest, and that's at 55
10 degrees. And then you have the fully opened position, which is
11 the fully opened rotation which is all the way open, which is
12 about 70 degrees.

13 Q. With respect to your work in this case, I want you to
14 assume, hypothetically again, that when you were looking at the
15 crime scene photographs -- you testified before that showed the
16 door at the 55-degree angle; is that correct?

17 A. It seemed to me that it was a 55-degree angle, yes.

18 Q. And I want you to assume that that door had been, before it
19 was photographed and after the shooting took place, had been
20 closed, and then opened again just for photographic purposes
21 without any intention to have it represent the position the
22 door was at the time the shooting took place. Do you have that
23 in mind?

24 A. Yes.

25 Q. With that understanding, how much value would you put into

1 the angle at which the door was photographed at the crime
2 scene, in terms of the position it was at the actual time the
3 shooting event occurred?

4 MR. GALIPO: I'm going to object to the question as
5 compound and vague.

6 THE COURT: I'll overrule. You're asking him whether
7 that had any significance to his opinion?

8 MR. LOEBS: Yes.

9 THE COURT: All right.

10 A. No, no. We don't know where the door was. No one knows.

11 MR. GALIPO: I'll object and move to strike that
12 nobody knows how far the door was open.

13 THE COURT: Well, if anybody knows and they've
14 testified to it, fine. If not, then there's an absence of that
15 in that connection. Go ahead.

16 BY MR. LOEBS:

17 Q. With respect to your work in this case, as to the way in
18 which a person can sit in a vehicle and the way in which an
19 individual can be shot while seated in the location you've
20 described -- do you have that in mind?

21 A. Yes.

22 Q. Did you do an evaluation as to whether, given the different
23 configurations of the street and the buildings and where the
24 SUV was located, did you do an evaluation as to whether those
25 injuries could have been sustained from the door opened at,

1 let's say, the second detent at 55 degrees from an individual,
2 say, generally on the -- in the area of the northern sidewalk
3 north of the SUV?

4 A. You're asking me if that could occur, if the injuries could
5 occur while the door's open at 55 degrees?

6 Q. Yes.

7 A. From a shooter on the sidewalk on the north side?

8 Q. Yes.

9 A. Yes.

10 Q. And in terms of what that would mean in terms of the
11 shooter's location, if the door's open less, then that would
12 somewhat limit where the shooter would have to be in order to
13 accommodate those shots, would you agree?

14 MR. GALIPO: I'll object as leading; and vague and
15 ambiguous as phrased.

16 THE COURT: I will overrule.

17 A. Yes. The door rotation, the amount of rotation of the
18 door -- and I should mention, we don't know -- I talk about the
19 detents, 30, 55 and 70, the door could be between detents. So
20 we don't really know what angle it was.

21 The rotation of the door will restrict the area from
22 which a shooting could occur to strike the decedent.

23 Q. If the door is open more, then the area in which the
24 individual who fired the shots could be, at least in terms of
25 the restrictions of Larch Way and incident to the scene as you

Jason - Redirect

1 examined it, could have been in a somewhat broader area?

2 A. The further the door's rotated open, the more latitude you
3 have to find a spot that would accommodate those trajectories.

4 Q. Let's talk about with -- and we're talking about in this
5 case, let's take, for example, if the door were at the second
6 detent, okay?

7 A. Okay.

8 Q. Where, in general, in that position, was the individual
9 that fired those shots in general on this exhibit if the door
10 was open at the second detent?

11 MR. GALIPO: I'll object. There's no foundation.

12 A. On the north sidewalk, somewhere near the red car.

13 Q. This red car?

14 A. That red car. Somewhere either behind that red car or
15 slightly to the right as we're looking at the picture.

16 Q. And if the door was more fully opened, closer to the full
17 range of the door, around 70 degrees or so, in general where
18 could the individual who fired the shots be located, with that
19 in mind?

20 A. It gives more latitude from the position behind the red car
21 to the east somewhat, to where the black number indicator is.
22 Some point in there.

23 Q. Around by the black number 618?

24 A. Yes.

25 Q. So hypothetically, let's say Officer Paine testified that

1 when he fired the shots, that he was standing on the sidewalk,
2 the north part of the sidewalk, around the area of 618, as
3 depicted on Exhibit V5-02, do you have an opinion as to whether
4 that would be consistent with the door being opened to an
5 amount that it can be open and those shots being fired by
6 Officer Paine striking Mr. Boyd while he's seated on the
7 floorboard or rocker panel of the SUV?

8 MR. GALIPO: I'll object as an incomplete hypothetical
9 and also improperly referring to trial testimony.

10 THE COURT: Sustained.

11 Q. Hypothetically, I want you to assume that the shooter was,
12 the person who fired the shots, was in the location here behind
13 around 618. Do you have that in mind?

14 A. Yes.

15 Q. With that hypothetical in mind, that individual fired the
16 shots at Mr. Boyd, would that be consistent with your analysis
17 as to Mr. Boyd's trajectory of his wounds and being seated in
18 the rocker panel with his hand to the left side of his left
19 thigh, as you've described?

20 MR. GALIPO: Objection, incomplete hypothetical as to
21 the angle of the door.

22 THE COURT: Overruled. It's per cross-examination.

23 A. Yes, it is consistent, that shooting location is consistent
24 with the physical evidence and in terms of the wound, wound
25 paths, and the blood evidence.

Jason - Redirect

1 Q. Now, in terms of this case, are you giving any opinion
2 yourself as to what was the more likely position in terms of
3 how far the door was open in terms of whether it was 55 degrees
4 or 70 degrees?

5 A. No, I do not know how far the door was open, other than to
6 say the door had to be open sufficiently to allow someone to be
7 seated, as I've indicated in the other exhibit, and to allow
8 the trajectories to -- the bullet trajectories to get into the
9 car, or into the decedent.

10 Q. So really the significance of how far the door is opened,
11 whether it was 55 or 70, that just relates to where along the
12 northern sidewalk the individual who fired the shots would be
13 located; is that correct?

14 MR. GALIPO: Objection, leading.

15 THE COURT: I'll overrule, and I'll tell you why in a
16 minute. You can answer the question.

17 THE WITNESS: Yes.

18 THE COURT: Okay. Ordinarily, I don't believe that
19 leading will lie as an objection to expert testimony, on the
20 theory that the expert knows more than the lawyer who's asking
21 the questions and can't be talked into an answer. Okay.

22 THE WITNESS: Remember that, Mr. Loeb.

23 MR. LOEBS: I'll stipulate to that theory.

24 THE COURT: To the extent someone's asking them on
25 factual matters, of course, then the objection could still lie.

Jason - Redirect

1 But if it's as to their opinion --

2 MR. LOEBS: This actually might be a good time for our
3 break, your Honor.

4 THE COURT: Once again, ladies and gentlemen, take an
5 hour's break. Thank you very much. Remember my admonition.

6 (The jury exited the courtroom)

7 THE COURT: That doesn't necessarily mean it's an
8 effective way to cross-examine or to examine. All right.

9 (Luncheon recess, 12:13 p.m.)

10 DEPUTY CLERK: Please come to order.

11 THE COURT: Okay.

12 (The jury entered the courtroom)

13 (In open court; jury present)

14 THE COURT: Good afternoon, ladies and gentlemen. I
15 notice it's kind of cold in here this afternoon. Is there
16 anyone who wants to get a jacket or something?

17 Okay. Well, then, Mr. Jason.

18 JUROR NO. 6: It gets colder every day.

19 THE COURT: Okay. Mr. Jason's back in the stand.

20 BY MR. LOEBS:

21 Q. During direct and cross-examination you were asked some
22 questions about a model that you used with the vehicle to
23 reflect some of your opinions in this case. Do you recall
24 discussing that?

25 A. Yes.

Jason - Redirect

1 Q. And I believe there was some exhibits produced by
2 Mr. Galipo, 192(a) through (c) related to your work with
3 respect to the model. Do you have those in mind?

4 A. I believe so, yes.

5 Q. What were those in general, 192(a) through (c)?

6 A. Can I be just shown those for sure?

7 DEPUTY CLERK: I do not have (c).

8 THE COURT: (c) ultimately was not used. No, (a, (b)
9 and (c) were used. (d) wasn't used. So there's three, (a),
10 (b), (b). They should all be similar in nature, photos of the
11 model.

12 DEPUTY CLERK: I do not have (c).

13 MR. LOEBS: Through (c). I believe one was withdrawn.

14 THE COURT: (c) was withdrawn.

15 MR. LOEBS: As being similar to one of the others.

16 MR. GALIPO: I thought it was (d), the fourth one.

17 THE COURT: (d) was not used. But there was -- I had
18 that there was (a), (b) and (c).

19 MR. GALIPO: That's what I thought.

20 THE COURT: And the clerk only has (a) and (b).

21 DEPUTY CLERK: I only have (a) and (b), your Honor.

22 THE COURT: Mr. Galipo, do you know where (c) went?

23 MR. GALIPO: I will look through my belongings and see
24 if I have it.

25 THE COURT: Right now we just have (a) and (b), and I

Jason - Redirect

1 don't remember what (c) was vis-a-vis -- let's see.

2 MR. LOEBS: In terms of our time, I don't have that
3 much left?

4 THE COURT: Okay, well -- (c) was the same idea as
5 (b), generally. But -- anyway, keep going. Whatever you've
6 got.

7 MR. LOEBS: May I approach, your Honor?

8 THE COURT: Yes, sure.

9 BY MR. LOEBS:

10 Q. Looking at these photographs, 192(a) and (b).

11 A. Yes.

12 Q. What are those?

13 A. They are pictures of the actual SUV that was involved in
14 this incident, and there seated inside is the person I used as
15 a model, similar height and weight.

16 Q. Are those intended to reflect by you your opinion in this
17 case regarding that individual and how they'd fit in the SUV
18 and represent in that regard the trajectories?

19 A. No.

20 Q. You did do -- you did take a photograph that does reflect
21 those opinions, correct?

22 A. Yes.

23 Q. And that is Exhibit U-5?

24 A. Yes, that is.

25 Q. And you talked a fair amount, I believe, yesterday and then

Jason - Redirect

1 today about Exhibit U-5 and what you did in order to illustrate
2 your opinions in this case?

3 A. Yes.

4 Q. And you mentioned something about a bullet hole in the
5 windshield that you believed was Officer Paine's third shot?

6 A. Yes.

7 Q. Is that visible in Exhibit U-5?

8 A. Yes, it is.

9 Q. Can you point that out using -- or me, telling me where to
10 go?

11 (Witness coming down from stand)

12 A. It's right here where I indicated above the model's head,
13 and to the left of the steering wheel there's a defect that's
14 the actual bullet hole. It's kind of hard to see, the window's
15 so dusty, the windshield is so dusty.

16 Q. In fact, there were some photographs introduced by
17 Mr. Galipo that showed that windshield from the front. Do you
18 have those in mind?

19 A. Yes, I do.

20 Q. And is that the same bullet hole?

21 A. Yes, it is.

22 Q. And this bullet hole, which direction was it going in terms
23 of the windshield; was it going from inside out or outside in?

24 A. From inside out.

25 Q. How confident are you of that?

Jason - Redirect

1 A. I'm very confident of that.

2 Q. Now, in coming up with your opinion, you said that that --
3 what did you say in terms of that bullet strike with respect to
4 someone being generally in the position of a photographer being
5 able to cause all three of these shots?

6 A. It's consistent with someone shooting all three shots could
7 certainly have been shot, and they're almost aligned, very
8 closely aligned, horizontally. There's not much dispersion
9 between them, really.

10 Q. Let's say, hypothetically, someone is about 24 feet away
11 firing these shots. How much change in the muzzle would there
12 be between these three shots as depicted generally in
13 Exhibit U-5?

14 A. At 24 feet, one degree change in elevation of a gun, up or
15 down, one degree, results in a five-inch difference in point of
16 impact. So if you move the gun just one degree, which is a
17 very small amount, like I'm indicating here, I can barely
18 indicate one degree without -- I hope I can be understood.
19 But, first of all, will result in a five-inch difference down
20 there. At the target, at 24 feet.

21 Q. Now, you've fired weapons yourself?

22 A. Yes.

23 Q. In terms of the weapon being in generally the same location
24 when it's fired, what's your opinion in this case as to whether
25 a weapon within a few degrees of the first shot through the

1 third shot would be consistent with what you found in terms of
2 the trajectories and the wound paths?

3 A. They are consistent. I'm sorry, what was your question?

4 Q. Just in terms of the -- let's say the spread, for lack of a
5 better term, of where you believe the bullets went, how
6 consistent, if at all, is that with a muzzle being in generally
7 the same location when the shots were fired?

8 A. It's very consistent.

9 Q. You were asked some questions about the angle that you used
10 for the door in this photograph, do you remember that?

11 A. Yes.

12 Q. And you said that was 55 degrees?

13 A. Yes. Yes, it is 55 degrees.

14 Q. That is the second detent?

15 A. Yes.

16 Q. Why did you use that angle for this photograph?

17 A. Just to be conservative, to show that the door could be
18 opened just that much and still someone could be seated in
19 there and be exposed to shots from the location of the -- where
20 the photographer is, essentially.

21 Q. Okay. And so if we imagine through this photograph the
22 door opened fully, that would create a greater range the
23 shooter could be in to accommodate the shots; is that correct?

24 A. Yes.

25 Q. So by doing this work, did you intend to represent that

Jason - Redirect

1 that is the exact angle the door was in when the shots were
2 fired?

3 A. No.

4 MR. LOEBS: Your Honor, I'll ask that U-5 be admitted
5 in evidence.

6 THE COURT: U-5? Wasn't that admitted earlier? Let
7 me look and see.

8 MR. GALIPO: All the blowups now into evidence, your
9 Honor.

10 THE COURT: Pardon me?

11 MR. LOEBS: We have a small version, I believe, that's
12 U-5.

13 THE COURT: We can discuss whether the blowups should
14 or shouldn't go in the jury room. I guess it hasn't been
15 admitted. Is there an objection to U-5?

16 MR. GALIPO: Not to the photograph, no. Not to it
17 being admitted.

18 THE COURT: Is there a small version?

19 MR. LOEBS: Yes.

20 THE COURT: U-5 will be the photograph. U-5(1) will
21 be the blowup, and that's U-5(1) is the blowup which is the
22 photo itself, and at some point we'll discuss what should be
23 available to the jury. Some of the larger diagrams of the
24 scene might be helpful to have in the jury room so they can all
25 be looking at it at once. Possibly also some of these

Jason - Redirect

1 photographs.

2 For now I'm admitting the small version.

3 (Defendants' Exhibit U-5 received in evidence)

4 MR. LOEBS: We're calling it U-5?

5 THE COURT: Is it the same as U-5?

6 MR. LOEBS: Yes, but it's a small version that would
7 be more --

8 THE COURT: That's fine, you can mark it -- I'd do it
9 on probably the back.

10 MR. LOEBS: It is the back. U-5(a)?

11 THE COURT: No, just U-5. The blowup is now U-5(1).
12 In fact, all the blowups, I was trying to make paren one, but
13 because we had the confusion about the V5-01, 02, the blowups
14 are actually the primary exhibit in that group.

15 BY MR. LOEBS:

16 Q. Mr. Jason, referring to U-5(1), the blowup, you mentioned
17 something before about, I believe in your cross-examination,
18 about this being a dynamic event?

19 A. Yes.

20 Q. What does that mean?

21 A. It means there's motion involved. The decedent wasn't
22 stationary, and there could have been movement during the
23 shooting.

24 Q. So this photograph just depicts one -- what would be one
25 moment, correct?

Jason - Redirect

1 A. Yes.

2 Q. And you're saying that the individual could have been
3 turning to the left, could have been turning to the right,
4 could have been moving, at the time the shots were fired?

5 MR. GALIPO: Objection as leading; no foundation.

6 THE COURT: I'll sustain as to that question.

7 Q. Mr. Jason, in terms of your opinions with respect to
8 whether the individual could have been moving at the time the
9 shots were fired, what's your opinion in that regard?

10 A. The individual could have been moving.

11 Q. How about with respect to the left hand, could the
12 individual's left hand have been moving at the time it was
13 struck by a bullet?

14 A. Yes.

15 Q. Now, if you were asked some questions about the abdominal
16 shot as is depicted on this Exhibit U-5, do you recall that?

17 A. I'm sorry?

18 Q. You were asked some questions by Mr. Galipo about the
19 abdominal injury depicted on 5-01?

20 A. Yes.

21 Q. And Mr. Galipo had a ruler or yardstick that he was using
22 to help illustrate the angle?

23 A. Yes.

24 Q. Is there a front-to-back component in this abdominal injury
25 as well?

Jason - Redirect

1 A. Yes, there is.

2 Q. What is that?

3 A. It means the bullet was not only traveling across the body
4 right to left, but inside the body more or less diagonally.

5 Q. And in your opinion, based upon your view of the autopsy
6 report by Dr. Smith and your review of the photographs on
7 autopsy and your review of Dr. Smith's description of the path
8 of the bullet, would that be consistent with one individual
9 with the muzzle of the gun essentially in the same location
10 creating these shots with the door open as indicated in U-5?

11 A. Yes.

12 Q. Now, you were asked some questions about whether -- let me
13 ask you this: In terms of whether this U-5 approximates
14 exactly the view that the individual firing the shots would
15 have had, is this somewhat closer than the individual would
16 have been in terms of the vantage point?

17 A. Well, it's not 24 feet away. We're talking about the
18 location of the sidewalk area. 22 feet 7 inches from the side
19 of the car. So this is a much closer representation, yes.

20 Q. Okay. Now, you were asked some questions about whether the
21 bullet that traveled through this area of the windshield,
22 whether you have any evidence that was located at the crime
23 scene. Do you remember discussing that?

24 A. Yes, yes.

25 Q. Is it unusual at all not to be able to locate each piece of

Jason - Redirect

1 physical evidence at a crime scene?

2 MR. GALIPO: I'll object, vague and ambiguous as to
3 "each piece of physical evidence."

4 THE COURT: Overruled.

5 A. It's not unusual that all projectile fragments or
6 projectiles are recovered, or are not recovered. In this case,
7 a hollow-point bullet, as this was, going through a windshield,
8 is most often stripped of its jacket, the copper jacket
9 surrounding the lead core. And then there's also likely to be
10 some distortion of the bullet. Now you have a lead core
11 traveling, which might hit a wall or curb or some other object
12 or car or something, and get further deformed, flattened. And
13 then not even be recognized as a bullet unless you really know
14 what you're looking for.

15 Q. In this case, in terms of your opinion, does the -- as far
16 as you understand, that this bullet that went through this
17 windshield wasn't recovered, at least reportedly recovered,
18 does that affect your opinions at all in this case?

19 A. No.

20 Q. Why not?

21 A. Well, the physical evidence is consistent with the three
22 shots having been fired from the sidewalk location. And two of
23 the bullets were recovered, and one wasn't, but there's
24 evidence of where the bullet struck.

25 Q. Now, you were asked some questions about whether you

Jason - Redirect

1 thought this shot, this shot through the windshield, whether
2 this could have come from a different angle, and that is, could
3 have gone through maybe the driver's side passenger window. Do
4 you recall that question?

5 A. Yes.

6 Q. And just in terms of a possibility, would that be in the
7 range of possibility?

8 A. It's possible, yes.

9 Q. Okay. Now, the -- we see in this photograph that the
10 driver's side passenger window or the driver's side back seat
11 window, for lack of a better term, is broken; is that your
12 understanding?

13 A. Yes.

14 Q. Do you have an understanding as what could have caused that
15 to happen?

16 MR. GALIPO: I'm going to object. This calls for
17 hearsay.

18 THE COURT: The form of the question, I'll sustain
19 objection to.

20 Q. Do you have any opinion as to what could have caused,
21 assuming that this windshield was shattered at the time of the
22 incident, what could have caused that?

23 MR. GALIPO: Objection, no foundation.

24 THE COURT: Sustained.

25 Q. Mr. Jason, I want you to assume that at some point during

Jason - Redirect

1 this -- the course of this event, that this windshield that we
2 see depicted on Exhibit U-5(1) was broken. Do you have that in
3 mind?

4 A. It's not a windshield.

5 Q. I'm sorry?

6 THE COURT: Window.

7 Q. Window was broken. Do you have that in mind?

8 A. Yes.

9 Q. Have you done any work in this case to evaluate what the
10 cause of that could have been?

11 A. Yes.

12 MR. GALIPO: I'll object as no foundation. And calls
13 for --

14 THE COURT: What's the lack of foundation? So far he
15 hasn't been asked for his opinion again. He's trying to lay
16 the foundation. He asked, Did you do any work? He said, Yes.
17 Now he's going to, I guess, say what he did.

18 MR. GALIPO: That's fine.

19 THE COURT: Overruled.

20 BY MR. LOEBS:

21 Q. What work did you do in order to evaluate what the cause of
22 that, the window being broken could be?

23 A. What possible cause?

24 Q. Yes, what work did you do in that regard?

25 A. I examined the car door and interior and exterior, and

Jason - Redirect

1 looked at the bullet impact marks and the -- and tried to
2 determine the angle of entrance into the car.

3 Q. And based on that, did you formulate any opinions as to
4 what the possible cause of that window being broken could be?

5 A. Yes.

6 Q. And what is that opinion?

7 A. The bullet strikes, there are I believe two bullet strikes
8 directly on the door. The bullet has entered, and I'm not sure
9 what they hit inside, but you could have enough essentially
10 vibration or shock from the bullets impacting the door to break
11 the glass. And there's one bullet, that one impact mark that's
12 to the right of the picture that's not seen where the bullet
13 travels through the body, and if it continues on its course, it
14 will probably strike the window mechanism, the supporting
15 mechanism for the glass. And that I have seen cases where
16 that's enough to break the tempered glass. That's tempered,
17 under stress, and it can be broken by an impact like that.

18 Q. What difference does that make if it's tempered glass?

19 A. Well, there's tempered glass and laminated glass. The
20 windshield is laminated glass; the side ones are tempered. And
21 it just -- that type of glass when it gets broken collapses,
22 generally, the entire glass pane will get crazed and come apart
23 as opposed to the windshield where the hole will be localized
24 to the defect area.

25 Q. Now, you were asked some questions, I believe, that were

Jason - Redirect

1 brought to your attention in the cross-examination regarding
2 what an individual on, let's say, the right side of this door,
3 as shown in V5, would have been able to observe if he was
4 looking on the right side of the door and looking at this
5 individual as you have seated on U-5(1), do you recall that
6 discussion?

7 MR. GALIPO: I'll object as vague and ambiguous as
8 phrased.

9 MR. LOEBS: I'll rephrase.

10 THE COURT: Okay.

11 Q. Do you recall Mr. Galipo asking you some questions, I think
12 it was yesterday, about what an individual standing on the
13 other side of this door might have been able to see in terms of
14 the way you have this model placed?

15 A. Oh, I think you were saying right before, but...

16 Q. I misspoke. It would be the left side.

17 A. Okay. Yes.

18 Q. Now, in -- specifically you were asked questions about what
19 Officer Warnke might have been able to see at the time the
20 shots were fired if Mr. Boyd was in generally the position that
21 you have with this model. Do you recall that?

22 A. Yes.

23 Q. What is your opinion in that regard?

24 A. The bottom of the window ledge, of the door, I believe it's
25 43, 44 inches, so anybody taller than that would probably be

Jason - Redirect

1 able to see into the car, could be through the window opening,
2 to see the model's face.

3 Q. Okay. So the question, I believe, had to do with if
4 Officer Warnke hypothetically was standing some distance back
5 to the left of the driver door with the door between him and
6 say Mr. Boyd situated as you have the model, would that officer
7 be able to see any portion of Mr. Boyd's face if the model was
8 situated in this situation? Is that what you understood the
9 question to be?

10 A. If he's taller than 43 inches, I expect him to be able to,
11 yes.

12 Q. And is that essentially self-evident from this photograph?

13 MR. GALIPO: I'll object as vague and ambiguous; an
14 incomplete hypothetical, with respect to how far Officer Warnke
15 is back.

16 THE COURT: Overruled.

17 A. It is self-evident, I think, yes.

18 Q. Let's see specific then as to how far he would be back and
19 let's assume that Officer Warnke is five-nine. If he was
20 five-nine and if he was generally, using Exhibit V5-02,
21 somewhere in the back area of this stall by 616, somewhere
22 around here, do you have that in mind?

23 A. Yes.

24 Q. If the door was between him and Mr. Boyd, do you have that
25 in mind?

1 A. Yes.

2 Q. Would, in your opinion, Officer Warnke be able to see some
3 portion of Mr. Boyd's face as he's seated on the rocker panel
4 as you have the model depicted in V5-01?

5 A. I believe so.

6 Q. Now, you were asked quite a few questions about the blood
7 evidence that you examined.

8 A. Yes.

9 Q. Now --

10 A. Could I correct something?

11 Q. Sure.

12 A. It's 45 to 46 inches, the level of the window opening.

13 Q. So we're talking about this level from the ground up to the
14 level of the window opening?

15 A. Yes.

16 Q. And that's at 45 to 46 inches?

17 A. Yes.

18 Q. So the individual would have to be, their eye height would
19 have to be at that height or higher to be able to see through
20 the window and into the -- the head of the individual?

21 A. Yes.

22 Q. And five-nine would be enough?

23 A. Yes.

24 Q. I have some questions about the -- your work with respect
25 to the analysis of the blood, the blood evidence in this case.

Jason - Redirect

1 In your opinion, do you believe that it would be sufficient in
2 order to evaluate whether there was or was not high velocity
3 impact spatter to merely look at the crime scene photographs?

4 A. I think you should examine the car in this case.

5 Q. Why?

6 A. Because that type of spatter is very small and is not
7 always visible in photographs.

8 Q. With respect to this case in particular, did you think that
9 it was important to examine the vehicle to determine whether
10 there was any blood relevant to your evaluation?

11 A. Yes.

12 Q. And did you do that?

13 A. Yes, I did.

14 Q. And the photographs you took, what was the process you took
15 in taking those photographs to show the blood patterns that you
16 found of significance?

17 A. Well, the blood that I saw I documented as best I could
18 using high resolution camera and different exposures because
19 some of it was hard to see. Even some of the pictures I took
20 you couldn't really see it clearly than the other ones I did.
21 And then when I printed the pictures, I changed -- I adjusted
22 the exposure to maximize the contrast so you can really see
23 them as well as possible.

24 Q. And why did you do that?

25 A. Visibility.

Jason - Redirect

1 Q. In terms of reaching opinions regarding blood spatter, you
2 were asked some questions about -- Mr. Galipo asked you some
3 questions about whether Mr. Firestone -- or Dr. Firestone had
4 any opinions contrary to yours or whether you ever learned that
5 he had any opinions contrary to yours regarding blood spatter.
6 Do you recall that?

7 A. Yes.

8 Q. Now, I want you to assume, hypothetically, that
9 Dr. Firestone never, not one time, ever went to the SUV and
10 looked at it himself with his own eyes. With that assumption
11 in mind, do you have an opinion as to what ability
12 Dr. Firestone would have to be able to discern whether there
13 was high velocity impact spatter here or not?

14 MR. GALIPO: I'll object as calling for speculation as
15 phrased.

16 THE COURT: I assume this is not limited to
17 Dr. Firestone but anyone who had only a certain body of
18 information.

19 MR. LOEBS: Yes.

20 THE COURT: With that understanding, I'm overruling.

21 A. I think -- I'm sorry, I don't remember the particular
22 question.

23 Q. In this case, how important is it in your mind to actually
24 go and look at the vehicle rather than just look at some
25 photographs?

1 A. It's very important.

2 Q. Why?

3 A. Because the type of evidence, the blood evidence, is very
4 small and you really need to look for it with -- I use a high
5 density light and magnification, and I don't think you can
6 really offer an opinion on the blood evidence in this case
7 without looking at the car.

8 Q. Now, in terms of the blood evidence that you found, there
9 was some questions that Mr. Galipo asked about the pattern and
10 the directionality of the blood that was inside the SUV. Do
11 you have that in mind?

12 A. Yes.

13 Q. Now, based on your review and looking at the blood that was
14 in the SUV, what is your opinion as to whether that blood would
15 be consistent with an injury to the left hand as you've
16 described?

17 A. It is consistent, yes.

18 Q. How so?

19 A. The blood distribution, the -- of blood. The presence of
20 the blood on the bolt cover in the very small droplets, that
21 linear pattern is consistent with perhaps the lacerated area of
22 the thumb. Then the blood from -- the transfer blood area --
23 the transfer blood deposits are consistent with a bloody hand
24 moving back and forth and left and right on the carpeted
25 surface.

1 Q. How about in terms of the amount of blood you saw inside
2 the SUV, do you have an opinion as to whether that amount of
3 blood can be left, let's say, in one or two seconds after an
4 individual sustained the types of injuries you understand
5 Mr. Boyd sustained to his left hand from a gunshot?

6 A. I believe it is consistent. Particularly -- in particular
7 consideration of the laceration of his thumb, which is not just
8 the standard bullet wound, but when you have an irregular entry
9 wound caused by a deformed bullet, maybe a destabilized bullet,
10 so there would be, I expect, a lot of blood.

11 Q. You were asked some questions about whether you could
12 determine how long the blood had been there. Do you recall
13 that?

14 A. Yes.

15 Q. Is that something that in doing blood spatter analysis you
16 can ever determine?

17 A. Well, you can determine -- if the blood is wet or dry, you
18 can get some indication of how long it's been there. But once
19 it's dried, I don't know of any analysis that would allow that
20 determination.

21 Q. So with respect to your opinion with regard to this blood
22 being consistent with the left hand being in the area you
23 described, is that your opinion in this regard, that that would
24 relate to this event?

25 MR. GALIPO: I'm going to object as vague and

Jason - Redirect

1 ambiguous as phrased.

2 MR. LOEBS: I'll rephrase, your Honor.

3 THE COURT: Is it just the "relate to this event"?

4 MR. LOEBS: I'll rephrase it. As I heard it, I didn't
5 like it either.

6 THE COURT: All right.

7 Q. Mr. Jason, do you have an opinion in this case as to
8 whether the blood evidence that you found inside the SUV has
9 any relationship to the gunshot wounds that Mr. Boyd sustained?

10 A. Yes, they are consistent with the gunshot wounds that he
11 sustained.

12 Q. And consistent with a high-velocity impact?

13 MR. GALIPO: I'm going to object as vague as to
14 which -- which blood evidence.

15 THE COURT: Overruled.

16 A. Yes, it is consistent with the high-velocity impact
17 spatter.

18 Q. And when you talked about the -- we'll get to that in a
19 minute. But let me first ask you in terms of the pattern that
20 the blood left, looking at Exhibit X5-02, do you recall being
21 asked some questions about that?

22 A. Yes.

23 Q. And you were asked some questions about whether you found
24 any blood in this exhibit to the right of the bolt cover; is
25 that correct?

Jason - Redirect

1 A. Yes, on the rocker panel and the carpeted area to the right
2 of the bolt cover as we're looking at it.

3 Q. Did you find any?

4 A. No.

5 Q. With respect to the work that you did with the model and
6 how you had him positioned on the vehicle, where would his left
7 leg be in relation to an area that might -- this area, Exhibit
8 X5-02?

9 MR. GALIPO: I'm going to object as vague as to point
10 in time to the person falling out of the car.

11 THE COURT: Overruled.

12 A. His leg would be on top of the covering, the rocker panel.
13 And part of his leg and buttocks would be on the carpeted
14 floorboard.

15 Q. Okay. So in terms of the area of X5-02 that we see here,
16 that's where you don't see any -- or you didn't find any blood,
17 are you saying that that area very likely could have been where
18 his left leg was?

19 MR. GALIPO: I'll object as leading and vague as to
20 point in time.

21 THE COURT: Overruled.

22 A. Yes.

23 Q. And in terms of the point in time, we're talking about at
24 the time that the injury to the left hand was sustained. Do
25 you have that in mind?

1 A. Yes.

2 Q. Now, there was -- I wanted you to assume there's some
3 testimony that at some point after the left hand was inside the
4 vehicle, gunshot wound sustained to the abdomen, that Mr. Boyd
5 moved his left hand to cover the area of the abdominal wound.
6 Do you have that in mind?

7 A. Yes.

8 Q. How would that relate at all to any pattern of blood that
9 you might expect to see in the SUV in terms of on the rocker
10 panel or otherwise?

11 A. Well, you would expect with the left hand to the left of
12 the body as seated in the rocker panel and as shown in U-5, if
13 the hand was struck, it could be moving while it was struck or
14 just before it was struck, and then after it was struck, and it
15 might be moved in reaction to being struck as if it was bitten
16 and pulled back or pushed forward, so there would be a blood --
17 I would expect to find transfer blood as seen there. As
18 consistent with that type of injury. And then if he raises his
19 hand up across the bolt cover and up above his thigh, reaching
20 over to his right side, everything's consistent with that.

21 Q. Now, with respect to your analysis regarding Mr. Boyd's
22 position in the vehicle when the wounds were sustained, do you
23 recall before you also created a diagram to illustrate your
24 testimony in that regard, or a graphic?

25 A. Yes.

Jason - Redirect

1 MR. LOEBS: And we've shown this, this is Exhibit W-8.

2 THE COURT: I'm sorry, which is that again?

3 MR. LOEBS: W-8.

4 THE COURT: W-8.

5 Q. And you talked awhile ago about what the upper left-hand

6 corner, it is in terms of the wounds in the anatomical

7 position. Do you have that in mind?

8 A. Yes.

9 Q. And Mr. Galipo was asking you to do some measurements on

10 him and some illustrations on him. Is this, regardless of what

11 you did with Mr. Galipo, is this still your understanding of

12 the trajectory of the wounds sustained by Mr. Boyd?

13 A. Yes.

14 Q. In terms of your work on Exhibit W-8 when you're talking

15 about the wounds being sustained through the abdominal injury

16 and the left leg and the left hand, how does this exhibit

17 explain your opinions in that regard?

18 MR. GALIPO: I'm going to object -- I withdraw the

19 objection.

20 THE COURT: Okay. You may answer.

21 THE WITNESS: Thank you, Ma'am.

22 This, the graphic shows the body of someone with those

23 type of wound paths now seated in a dynamic position. And it

24 shows that the leg wound aligns with the hand wound. You see

25 the green rod, which represents the leg trajectory, aligning

1 with the yellow hand injury. And then the blue rod on the left
2 side is indicating the wound path of the abdominal gunshot
3 wound.

4 BY MR. LOEBS:

5 Q. Now, you were asked some questions by Mr. Galipo with
6 respect to the abdominal injury to Mr. Boyd, whether that would
7 necessarily, if the individual, Mr. Boyd, were seated, mean
8 that the bullet would have to go through the door first before
9 causing an injury. Do you recall that -- those questions?

10 MR. GALIPO: I'm going to object. The question is
11 vague and ambiguous depending on the position of the shooter.

12 THE COURT: Overruled.

13 A. I didn't quite understand the question.

14 Q. I'll rephrase. The questions that you were asked by
15 Mr. Galipo as to whether to sustain the abdominal injury with
16 the individual seated as you've described, whether it would
17 necessarily mean that the bullet would have to go through the
18 door first to cause the injury in the abdominal area. Do you
19 remember that discussion?

20 A. Yes.

21 Q. Does this exhibit, W-8, illustrate your opinion in that
22 regard?

23 MR. GALIPO: I'm going to object. This exhibit was
24 not meant to illustrate any opinions as previously discussed.

25 THE COURT: I don't know what that objection means.

Jason - Redirect

1 Overruled.

2 A. This does -- one of the elements that this graphic
3 demonstrates, shows, is that a wound path into the abdomen does
4 not have to go through the door, if that's the question.

5 Q. And that's your opinion in this regard?

6 A. It is my opinion.

7 Q. And with respect to these wound paths coming from the same
8 focal point, that is, the abdominal injury, the left leg
9 injury, based upon your understanding of the autopsy report by
10 Dr. Smith, does this exhibit reflect your opinions in that
11 regard?

12 MR. GALIPO: I'll object as no foundation, your Honor.

13 THE COURT: I'm trying to see. This exhibit has not
14 been admitted. Your question is what?

15 MR. LOEBS: His opinions regarding the trajectories
16 coming from the same focal point.

17 THE COURT: I'll overrule.

18 A. Yes, it does. The same area of origin, or point of origin.

19 Q. And with respect to what you've illustrated in this
20 graphic, that would be -- for the abdominal injury, that would
21 be consistent with your understanding of the trajectory through
22 Mr. -- into Mr. Boyd's body; is that correct?

23 A. Yes.

24 THE COURT: Are you offering this exhibit?

25 MR. LOEBS: Yes, your Honor.

Jason - Redirect

1 THE COURT: This witness created this exhibit?

2 MR. LOEBS: Yes.

3 THE COURT: Is there an objection to W-8?

4 MR. GALIPO: Without making a speaking objection, your
5 Honor, yes. Based on our prior discussions, that we're not
6 meant to duplicate this event.

7 THE COURT: When you say "prior discussions,"
8 something that's happened in front of the jury?

9 MR. GALIPO: I'm not sure.

10 THE COURT: Because I'm not sure what you mean by
11 "prior discussion." Whether you're talking about the -- some
12 of the witness's testimony, whether there's something that
13 happened.

14 MR. GALIPO: I'll be more specific.

15 THE COURT: Is it something I should send the jury out
16 for?

17 MR. GALIPO: No, I'd rather not have to do that.
18 Maybe we can take it up on break, if that's okay. The
19 admission of it.

20 THE COURT: I don't remember specifically discussing
21 the exhibit, we may have, and so I'm a little concerned about
22 what the nature of the objection would be. Can you hold off on
23 the admission of this?

24 MR. LOEBS: Yes.

25 THE COURT: And we'll take it up at the break.

Jason - Redirect

1 MR. LOEBS: Yes, we can.

2 THE COURT: Okay.

3 BY MR. LOEBS:

4 Q. Mr. Jason, with respect to your opinions regarding the
5 trajectories from Officer Paine's point of view, in terms of
6 the -- your analysis of where -- your analysis with respect to
7 where he could have been to have caused these injuries. Do you
8 have that in mind?

9 A. Yes.

10 Q. In terms of the height of the muzzle, height of the gun
11 that you used, you already explained how you arrived at that?

12 A. Yes.

13 Q. And if that height is 51 inches, then you would add 6
14 inches because he was on the sidewalk?

15 A. Yes.

16 Q. And with respect to the trajectory from that location to
17 the left leg, the left leg is parallel to the ground and the
18 entry wound would be 24 inches off the ground and the exit
19 wound having a downward trajectory of 5 to 10 degrees, do you
20 have any opinion as to, with respect to that shot, how that
21 would reflect, how that would relate to the trajectory from a
22 bullet fired by Officer Paine in a location you've described?

23 MR. GALIPO: I'll object as Mr. Loeb's indicated the
24 exit wound was in the back of the thigh, that mischaracterizes
25 the evidence.

Jason - Redirect

1 THE COURT: All right. That's the one objection?

2 MR. GALIPO: That's the one objection, unless he wants
3 to describe --

4 THE COURT: That's the objection?

5 MR. GALIPO: Yes.

6 THE COURT: I'll sustain as to that part. You'll have
7 to reframe the question.

8 BY MR. LOEBS:

9 Q. Mr. Jason, in terms of your understanding the entry wound
10 and the exit wound of the left leg, and you understood Dr. --
11 you accepted Dr. Bonnell's representation that would be at a 5
12 to 10-degree downward angle if the individual was seated with
13 the leg parallel to the ground?

14 A. Yes.

15 Q. With that understanding, how does that relate to a
16 trajectory fired from a muzzle height of 57 inches, 24 feet
17 away?

18 A. 57 inches, relative to the surface of the street there, I
19 did some calculations on it, and that would be a shot fired at
20 a 6.5-degree angle of depression. That means the gun would be
21 depressed by approximately 6.5 degrees, to a line with that
22 impact.

23 Q. Now, you were asked some questions about the abdominal
24 injury and your understanding as to the downward trajectory
25 with respect to the abdominal injury. Do you recall that?

Jason - Redirect

1 A. Yes.

2 Q. How does that relate to your opinions with respect to the
3 trajectory from this weapon, assuming it was 24 feet away at a
4 height of about 57 inches?

5 Let me ask this first: What would be the height of
6 the entrance wound of the abdominal injury with the individual
7 seated?

8 A. Relative to the ground, about 30 inches. Remember, the
9 thigh wound is at 24, and the torso injury would be about 30
10 inches above the ground.

11 Q. In terms of your opinion with regard to the trajectory with
12 the gun at the height and the distance we just described, what
13 is your opinion in that regard?

14 A. Well, a shot from 51 inches -- from 57 inches high at 24
15 feet would result in a 4.3-degree downward trajectory, that is
16 angle of depression, 4.3 degrees to the abdomen. But now we
17 have a wound path through the body which is estimated at 10 to
18 15. So to accommodate that, we have this one trajectory coming
19 in, but we have a 10 to 15 degree in the body. So it's
20 consistent with the body being, the torso being rotated to the
21 right, to the decedent's right slightly, about 6 to 11 degrees.
22 When he aligns this way. Then the trajectory of the bullet
23 coming in at 4.3 degrees would create a wound path of
24 approximately 10 to 15 degrees.

25 Q. Okay. So the 10 to 15-degree angle we're talking about is

1 the body in anatomic position?

2 A. Yes.

3 Q. And in terms of how someone might be actually seated on the
4 floorboard of this vehicle, their body can be somewhat
5 different than an absolute anatomic position?

6 A. Their body can be rotated to the right slightly in
7 different ways. But in this case it's to the torso being
8 rotated to the right.

9 Q. In W-8, did you intend in your depiction here to
10 approximate that degree of rotation?

11 A. Generally.

12 Q. So if someone was sitting in a fairly cramped space and
13 turning to the left looking for something under the seat, might
14 their body angle out to the right, as you've described?

15 MR. GALIPO: I'm going to object as leading, your
16 Honor.

17 THE COURT: Overruled.

18 A. Yes. Yes, the body could be rotated that way.

19 Q. And with respect to the shot to the windshield, what was
20 the angle of trajectory of that shot, assuming again the muzzle
21 height was 57 degrees, 24 feet away?

22 A. Not degrees, but 57 inches.

23 Q. Inches, my fault.

24 A. 24 feet away. We have 51 inches muzzle height and the
25 bullet defect in the window, in the windshield, is at 52

Jason - Redirect

1 inches. So there'd be a slight elevation, maybe one degree.

2 Q. Okay. In terms of your opinion with respect to this
3 difference in elevation between the bullets being fired by
4 muzzle and generally in the same location, how much adjustment
5 would the muzzle of the gun have to make from that distance
6 away to cause those shots?

7 A. For all three shots, we're talking about a range of
8 vertical movement of about within 5.5 degrees, which is a tiny,
9 tiny bit.

10 Q. Now, how about if we had an individual that was standing
11 with a muzzle height as you've described, 57 inches, 24 feet
12 away, what would the individual have to do in order to create
13 the trajectory through the abdominal injury that would match
14 the 15- to 10-degree downward trajectory?

15 A. He would have to lean to the right in the direction of the
16 shooter.

17 Q. Lean to the right?

18 A. Yes.

19 Q. Okay. At about 10 to 15 degrees?

20 MR. GALIPO: I'll object as leading, your Honor.

21 MR. LOEBS: Let me strike that.

22 Q. About what would the angle be if he was leaning to the
23 right?

24 A. About 10 to 15 degrees.

25 Q. And why do you have that opinion?

Jason - Redirect

1 A. That would create a wound path of 10 to 15 degrees which
2 would be in alignment with a shooting height of 51 inches.

3 Q. Assuming that the -- for the sake of discussion, that if
4 the individual, Mr. Boyd, was standing, how high off the ground
5 was the abdominal injury?

6 A. If he was standing, it would be about 50.5 inches. And
7 we're talking about the shooting height being 51 inches, so
8 it's essentially a flat shot. So if he was shot while he was
9 standing from 51 inches height, that shot would go straight
10 through him. Or straight into him. That is, parallel to the
11 ground. So to get a 10 to 15-degree downward, anatomically
12 downward trajectory, he has to lean 10 to 15 degrees to his
13 right.

14 Q. Now, you were asked some questions about how long it would
15 take someone to fall if they were standing.

16 A. Yes.

17 Q. And you answered those questions in terms of, you said you
18 used a phrase like "a sack of potatoes," something in that
19 regard?

20 A. I did use that term, yes.

21 Q. And what's your understanding if someone's standing with
22 their hands up and they start to fall like a sack of potatoes,
23 what their hands would do?

24 A. Their whole body would fall sort of in sync. Everything
25 goes down at the same time. The hands don't precede the body.

Jason - Redirect

1 The head. Everything goes down.

2 Q. You were asked some questions about shell casings?

3 A. Yeah.

4 Q. And with respect to -- let's talk first about the locations
5 where you understand Officer Paine's shell casings to be.

6 A. Yes.

7 Q. One would be Number 6; is that correct?

8 A. 6, yes.

9 Q. Another one would be Number 11?

10 A. 11, yes.

11 Q. And then the other one that Mr. Galipo asked you about was
12 in perhaps the windshield of a car?

13 A. Yes.

14 Q. And about where is that on this diagram?

15 A. It's, if you move your pointer up higher, next car.

16 Q. Here (indicating)?

17 A. Yes. On that windshield of that car, as indicated there.

18 Q. And is the car two below the Number 11, correct?

19 A. Yes.

20 Q. Okay. And what, if anything, did you conclude regarding
21 the location of the shell casings in terms of your evaluation
22 of Officer Paine's position when, as you believe it was, the,
23 with the shots were fired?

24 A. The position was consistent with the physical evidence.

25 Q. Yes, as you understand.

1 A. The shell casings, taking into consideration the casings
2 are striking onto hard surfaces, car bodies, concrete, asphalt,
3 perhaps the side of a building, and then rolling, and people
4 are running around and kicking things or potentially kicking
5 things, there's no real inconsistency with the location
6 compared to the shooting -- that is, the casing locations
7 compared to the shooting locations.

8 Q. How much weight do you put on the location of a shell
9 casing to determine where a person was when a shot was fired?

10 A. There are general indications. For example, if you found
11 the casings on the other side of the street, you'd wonder about
12 that. There may be explanations for it, but that may be
13 something to look at. But in general you can learn some things
14 about the shooting location from the casing locations,
15 especially when it's on a soft surface like grass.

16 Q. Now, with respect to Officer O'Malley's shell casings,
17 what, if any, information did it give you about what you
18 understood to be or in your analysis determine to be his
19 location when he fired his shot on Larch?

20 A. Well, the casing is in the little doorway there. If you
21 want to indicate it, it's Number 15. And it is, in the general
22 area where he might have fired. How it got there, I don't
23 know. It could have been kicked or rolled.

24 Q. In terms of your evaluation with respect to Officer
25 O'Malley's shot, talked about Exhibit F-9, in terms of your

Jason - Redirect

1 analysis in terms of where he must have been to make this shot
2 over -- first of all, what is this angle through the vehicle?

3 A. The angle?

4 Q. Yes.

5 A. 38 degrees.

6 Q. And what does this information tell you about where
7 O'Malley, Officer O'Malley must have been in order to make this
8 shot?

9 A. If you follow the yellow, yellow rod back north, it
10 indicates -- in general, I don't want to say this is the exact
11 location of that rod, that that points exactly to where it
12 would have been, but that general area points to where it would
13 have been behind that red car -- I can't read that parking
14 space number there.

15 Q. 2040?

16 A. I'll accept that.

17 Q. Okay. Just a couple more things. You were asked some
18 questions about whether you had any physical evidence regarding
19 the first shot fired at Broderick Street as indicated on
20 Exhibit T-5?

21 A. Yes.

22 Q. You didn't find any -- you're not aware of any bullets that
23 were recovered as a result of that shot; is that correct?

24 A. That's correct.

25 Q. Do you have any physical evidence that relates to that

Jason - Redirect

1 shot?

2 A. The physical evidence is in the form of the audio
3 recording, and you can hear an impulse sound that's consistent
4 with a gunshot. Just before the officer says, "Shots fired,
5 shots fired."

6 Q. And that audio recording is the CAD dispatch tape?

7 A. Yeah, SFPD dispatch tape, yes.

8 Q. One last area of questions. You were asked some questions
9 about whether you did any evaluation in terms of Mr. Boyd's
10 position based upon the location of his prosthetic legs were
11 after the shooting event occurred. Do you recall those
12 questions?

13 A. Yes.

14 Q. I want you to assume hypothetically that after the shooting
15 event occurred, Mr. Boyd was moved away from the vehicle. Do
16 you have that in mind?

17 A. Yes.

18 Q. With that in mind, what relevance, if any, to you would be
19 the location of Mr. Boyd's prosthetic legs after he was moved
20 following the shooting event?

21 A. I don't know. I don't know.

22 Q. Did you use that in evaluating your opinions in any way in
23 this case?

24 A. No.

25 Q. Is that in part that you understood that he had been moved?

Jason - Redirect

1 A. He had been moved, yes.

2 MR. LOEBS: Thank you. That's all the questions I
3 have, your Honor.

4 THE COURT: Any recross?

5 MR. GALIPO: Yes, your Honor.

6 RECROSS EXAMINATION

7 BY MR. GALIPO:

8 Q. Good afternoon, Mr. Jason.

9 A. Good afternoon.

10 Q. With regards to the last question about the prosthetics?

11 A. Yes.

12 Q. Did you at least in looking at the crime scene photos see
13 where that tarp ended up in relation to the vehicle?

14 A. Yes, I did.

15 Q. Does it appear to be consistent with Sergeant Riggle's
16 diagram in that regard?

17 A. I believe so, yes.

18 Q. I want you to assume, hypothetically, that Mr. Boyd's body,
19 after coming to rest on the ground, was pulled directly north
20 of the vehicle. Do you have that in mind? It was pulled in a
21 north direction?

22 A. This is a hypothetical?

23 Q. Hypothetical.

24 MR. LOEBS: If I could have a moment to reorient so I
25 can see what you're doing.

1 MR. GALIPO: Oh, of course.

2 A. Yes, I have that in mind.

3 Q. And further assume that when the body was pulled in a north
4 direction, the legs immediately separated and ended up where we
5 see Number 13 in the diagram. Do you have that fact in mind?

6 MR. LOEBS: Objection, your Honor, lack of foundation
7 as to "immediately separated." Immediately separated, and
8 vague.

9 MR. GALIPO: Separated from his upper body.

10 THE COURT: No. Are you objecting to the use of the
11 word "immediately" --

12 MR. LOEBS: Yes.

13 THE COURT: -- "separated"?

14 MR. LOEBS: Yes, and lack of foundation and being
15 vague. Calls for speculation.

16 THE COURT: Is there some witness who described the
17 speed with which the separation occurred?

18 MR. GALIPO: I don't think any particular velocity was
19 used, but I think there was testimony that they started pulling
20 him, and the legs stayed there and the upper body came out.

21 THE COURT: Again, ladies and gentlemen, I'll overrule
22 the objection. You're going to put the question to the witness
23 again. And I'll just indicate again, ladies and gentlemen,
24 that you will be the ultimate determiners of what the
25 underpinnings are of any hypothetical question that's given to

Jason - Recross

1 a witness. You'll have to decide whether the evidence actually
2 supports that hypothetical.

3 Okay, go ahead.

4 MR. GALIPO: Thank you.

5 BY MR. GALIPO:

6 Q. Again, with the hypothetical, you see Number 13, you
7 understand that relates to the prosthetics, correct?

8 A. Yes.

9 Q. Okay. If that was the area where the prosthetics were, and
10 the body was pulled in a north direction and the prosthetics
11 essentially stayed in that area, would that be information that
12 would be important to you in analyzing where Mr. Boyd was at
13 the time the shots were fired?

14 MR. LOEBS: Objection, lack of foundation; vague as to
15 what he meant by the "prosthetics were."

16 THE COURT: Overruled. If the witness has any
17 difficulty with the meaning of a question, just indicate such,
18 Mr. Jason.

19 A. You're asking about the location of the prosthetics, as how
20 that would relate to my determining the location of where the
21 decedent was when he was shot. It's generally consistent with
22 it in view of the -- your hypothetical that he was pulled away
23 and his legs separated somehow. I don't really know how -- the
24 mechanism involved there.

25 Q. Assuming the prosthetics, after he fell to the ground, in

1 the area of 13 towards the passenger door on the driver's side
2 of the vehicle, do you think that's consistent with your
3 position of having him seated in between the seat and the
4 floorboard when he was shot?

5 MR. LOEBS: Objection, vague as to area of 13; and
6 vague as to the time; it calls for speculation; and lack of
7 foundation.

8 THE COURT: Overruled.

9 A. I don't -- I'm not sure how he fell out of the car. If he
10 fell with his head towards the front of the vehicle and laid
11 alongside the vehicle and was pulled from behind, that's where
12 the prostheses would be if they came off, I would assume it's
13 consistent with that.

14 Q. What if he fell with his head to the north and had his feet
15 closer to the vehicle, would that change your opinion?

16 A. It would depend on how he was pulled and in what direction.
17 I don't know anything about that.

18 Q. Okay. Now, regarding Officer O'Malley's shot, you
19 basically had two points with which to make your trajectory,
20 correct? One was the damage point in the vehicle?

21 A. I really had three points.

22 Q. Damage point in the vehicle was one.

23 A. There's two there.

24 Q. Two damage points in the vehicle.

25 A. Right.

Jason - Recross

1 Q. And then the location of the shot in the window.

2 A. The bullet, location, yes.

3 Q. Now, the only variable would be where the car was at,
4 correct?

5 A. The only variable. I'm not sure what you mean.

6 Q. Is it your testimony that the car could have only been in
7 one place no matter where the shooter was to make that
8 trajectory?

9 A. One general location. Because those two defects in the
10 car, the interior and the exterior, when you put a rod through
11 there, it's a really tight fit. It gives you a very good
12 indication of the angle through the car.

13 Q. Did you take a picture of that for us?

14 A. I think I did.

15 Q. You did take a picture of that?

16 A. I think so.

17 Q. Okay. Now, regarding the casing found on the front
18 windshield of the vehicle that I'm pointing to, do you have
19 that casing in mind?

20 A. Yes, that was one of Officer Paine's casings. Yes.

21 Q. You have indicated already, I think, that based on your
22 knowledge of the ejection patterns of these casings, they eject
23 upward and to the right. Is that correct?

24 A. Upward and to the right. And slightly to the rear
25 generally, but they could have a forward component.

Jason - Recross

1 Q. Is a casing in your mind found on a front windshield of
2 that car consistent with Officer Paine being 12 feet from the
3 decedent at the time he fired the shot?

4 A. 12 feet. That could be, yeah.

5 Q. Okay.

6 A. That would place him out away from the -- up off the
7 sidewalk and about halfway to the car where the number -- I
8 think it says 140 on there, could you point to that?

9 Q. Well, it would place him approximately in the middle of
10 that parking space, correct (indicating)?

11 A. 12 feet would actually place him further to the south.

12 Q. And if someone was standing in that direction and the
13 casing ejected upward and to the right and slightly to the
14 back, one place it could land would be the top of that
15 windshield, correct?

16 A. That's true.

17 Q. Now, with respect to the position that you have in U-5 of
18 this model that we've all seen sitting and reaching under the
19 seat, would you agree, based on your analysis of this case, for
20 Mr. Boyd to have been sitting on the running board and reaching
21 in the area under the seat at the time the shots were fired,
22 that would be the only position in the car he could have been
23 seated?

24 A. Well, first of all, there's no running board. I assume
25 you're talking about the rocker panel.

Jason - Recross

1 Q. Floorboard.

2 A. Floorboard. You're asking me if that's the only location
3 or only orientation?

4 Q. Well, actually both, I'll break it down. First of all,
5 that's the only location in the car looking at U-5 that he
6 could have been seated to get the trajectory having his body
7 turned reaching under the seat; isn't that true?

8 A. That's the general location that he would have had to have
9 been in, yes.

10 Q. Couldn't have been anywhere else if he was seated, would
11 you agree?

12 A. If the door was open, rotated fully, there is some left and
13 right latitude. He could be -- somewhere in that general
14 location, if that's what you're asking.

15 Q. He couldn't have been seated in front of the -- to the side
16 of the seat, correct?

17 A. No.

18 Q. Is that correct?

19 A. That's correct.

20 Q. So if he wasn't in this general position to sustain the
21 trajectories in the seated position, he had to be in some other
22 position, would you agree?

23 MR. LOEBS: Objection, your Honor, calls for
24 speculation; lack of foundation.

25 THE COURT: I'll overrule.

Jason - Recross

1 A. Could you ask it again, please?

2 Q. Sure. If he was not seated in between the front of the
3 seat and this area that we see in U-5, with his body turned as
4 we see here, then he had to be -- to get those trajectories,
5 let's assume that we knew he wasn't in that position,
6 hypothetically, then he couldn't have been seated in the car at
7 the time he sustained the shots; isn't that true?

8 A. I'm having trouble with this question. I'm saying this
9 position is consistent with the evidence. I don't really
10 understand what you're asking.

11 Q. What I'm getting at, Mr. Jason, is the only place that he
12 could have been seated in the car to get these trajectories and
13 be reaching in the area of the front of the seat is the area we
14 see in U-5?

15 A. If part of your hypothetical is that he's reaching under
16 the seat as indicated, well, yes, that's the position he's
17 shown in.

18 Q. Right. And if he wasn't seated in that position, and I
19 mean in the position forward of the seat, in order for him to
20 sustain the trajectories, he had to be in some other position,
21 outside the vehicle?

22 MR. LOEBS: Your Honor, I object. The question is
23 lacking foundation.

24 THE COURT: Overruled.

25 A. I don't understand what you're saying. You're saying if he

Jason - Recross

1 wasn't seated like this, how could he have been shot? Is that
2 what you're asking me?

3 Q. You already told me that the trajectories would be
4 consistent with him being out of the vehicle shot, going down,
5 having the leg bent and picking up the other shot, you have
6 told me that already yesterday, correct?

7 MR. LOEBS: Objection, your Honor, to Mr. Galipo's
8 representation of his body movements.

9 THE COURT: I don't know how he moved yesterday. All
10 right. Skipping the body movements, do you have all those
11 parts of the question in mind; and if you do, did you testify
12 to such on cross-examination?

13 THE WITNESS: I think there was some hypothetical
14 points to that, to the question yesterday. What I'm saying is
15 that the physical evidence and specifically the blood evidence
16 is consistent with him being seated like that or near seated
17 like that, but with his left hand in that general area where
18 it's indicated.

19 BY MR. GALIPO:

20 Q. Mr. Jason, excluding what you think is high velocity blood
21 spatter, would you agree that the trajectories are consistent
22 with him being standing outside of the car, being shot first in
23 the right side, going down, and picking up the shot to the leg
24 and then to the hand in the process of going down?

25 MR. LOEBS: Object to the question as being vague; and

1 incomplete hypothetical; and compound.

2 THE COURT: Overruled.

3 A. I think it's -- first of all, you said to forget the blood
4 evidence. The high velocity blood evidence, right?

5 Q. Correct.

6 A. Okay. Because also the evidence, the blood evidence, the
7 projected blood on the front of the seat which essentially
8 points back to that same location. Are we forgetting that one
9 too?

10 Q. For this hypothetical, yes.

11 A. So without -- if there were no blood evidence, could he
12 have been shot while standing? Let's just take those shots
13 individually. The torso shot? He could have been standing and
14 been shot that way. If his body was rotated, as I said tilted
15 to the right to some degree, by 10 to 15 degrees. And then the
16 leg shot, you still want the leg shot to align with the hand
17 shot?

18 Q. Yes, I'm assuming in this scenario as he's going down, the
19 leg bends, and I'm bending my leg, the shot goes through his
20 leg and hits his hand and he's going down?

21 MR. LOEBS: I object to the demonstration by
22 Mr. Galipo as to the degree which his leg was bent and the
23 location of the hand.

24 THE COURT: Was that part of your question or not, the
25 specific movement?

Jason - Recross

1 MR. GALIPO: It didn't need to be.

2 THE COURT: Ignoring the movements and keeping the
3 question in mind, can you respond, Mr. Jason?

4 A. So the question is then, is it possible for his body to
5 align in such a way to allow the shot through the thigh to his
6 hand if he had started out standing.

7 Q. Yes.

8 A. Yes, it is possible, absent the blood evidence, yes.

9 Q. And now the blood, you would agree there was some blood in
10 the car before the shooting, correct? You already told us
11 that?

12 THE COURT: You can't say "you already told us that."

13 Q. Strike that.

14 You agree the bloody napkin was in the car before the
15 shooting, correct?

16 A. That's -- yes.

17 Q. You would agree that you can't say whether the transferred
18 blood was in the car before the shooting or not?

19 A. The transferred blood, no, I can't say that.

20 Q. So getting back to my question, the only place in the car
21 that Mr. Boyd could have been sitting to explain the blood
22 evidence and the trajectory and him reaching in an area towards
23 underneath the front of the seat is in the general area you
24 have shown in U-5?

25 A. That depiction is consistent with the physical evidence.

Jason - Recross

1 Q. And if he wasn't sitting in this general area in the area,
2 then you would agree he couldn't have been reaching under the
3 seat when he was shot, and sitting down in the car?

4 A. I'm sorry, you lost me on that one.

5 Q. If he wasn't sitting in the general area we see the model
6 in in U-5.

7 A. Yes.

8 Q. If he wasn't sitting in that general area, he could not
9 have been reaching underneath the front of the seat of the
10 vehicle and sustained the trajectories we have in this case?

11 A. If he was standing --

12 Q. No. If he wasn't seated in this specific area.

13 A. Yeah.

14 Q. As opposed to anywhere else in the car, he couldn't have
15 sustained the trajectories and been reaching under the front of
16 the seat, given the configurations of the car?

17 MR. LOEBS: Objection, vague as to his specific --

18 Q. The one shown in U-5.

19 A. All I have to say is that this position and orientation is
20 consistent with the evidence. I'm not -- I don't know what
21 you're asking for.

22 Q. Okay. Mr. Jason, let me try to break it down. He had to
23 be turned to his right in order to go the trajectory to the
24 right side, correct?

25 A. Yes.

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1 Q. He couldn't have been sitting here -- he had to be turned
2 to his left -- I apologize, I'm sorry. He couldn't have been
3 sitting here and be turned to his right towards the door
4 because his left side would have been to the shooter, correct?

5 A. Correct.

6 Q. Okay. And he couldn't have been sitting to the side of
7 this seat and turned to his right and be reaching under the
8 seat because he'd be reaching towards the back door, correct?

9 A. Correct.

10 Q. Okay. So the only place that he could have been sitting in
11 the car turned to his right to get potentially the projectile
12 to his right side and still be reaching under the seat is the
13 general area we see in the model in U-5?

14 MR. LOEBS: Objection. I think he meant to say
15 turning to his left.

16 Q. Turning to his left, I apologize.

17 A. Isn't that what I'm showing in that picture?

18 Q. What I'm trying to get at, Mr. Jason, if he wasn't sitting
19 in that area, the area shown in U-5, based on your analysis of
20 this case, he couldn't have been -- sustained the bullet
21 trajectories you have, and be seated in the car, and be
22 reaching underneath the seat?

23 MR. LOEBS: Object as to vague.

24 THE COURT: Overruled.

25 A. First of all, whether he's reaching under the seat or it's

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1 just his hand is located where it's located.

2 Q. Right.

3 A. Okay. So you're saying -- you're not asking me. You want
4 me to confirm that this is the only location he could be in,
5 configuration, orientation, is that what you're asking me?

6 Q. That's my question. If you can tell me another place that
7 he could have been sitting in this car and turned far enough to
8 his left to get the bullet trajectory and be reaching towards
9 the either underneath the seat or in the -- in that area,
10 please tell me what the position is.

11 A. There may be other positions that I haven't contemplated.
12 But this one is consistent with the evidence. And that's where
13 I'll stand.

14 Q. As you sit here today, can you think of any other position?

15 MR. LOEBS: Objection, your Honor, argumentative.

16 THE COURT: Sustained.

17 Q. Now, do you know, Mr. Jason, if Officer Paine has him
18 sitting in this position?

19 MR. LOEBS: Objection, your Honor, that's an
20 inappropriate question of this witness.

21 THE COURT: You're asking if this witness has been
22 advised as to what Officer Paine said the decedent's position
23 was?

24 MR. GALIPO: Correct.

25 MR. LOEBS: Objection, hearsay.

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1 THE COURT: Sustained, unless the witness based his
2 opinion on some out-of-court statement.

3 Q. Well, in doing -- strike that.

4 Okay. Looking again at V5-02, you told us that that
5 door was approximately 70 degrees?

6 A. The door on the SUV in that graphic, yes.

7 Q. And you also told us, I think, the first -- you refer to it
8 as a detent?

9 A. Detent, yes.

10 Q. Okay. The first one is 30 degrees; is that correct?

11 A. Yes.

12 Q. The second one is 55 degrees?

13 A. Yes.

14 Q. And in that original diagram that we talked about, 184, I
15 think we calculated yesterday 58 degrees?

16 A. I'll accept that.

17 Q. Now, would you come up here and mark where 30 degrees and
18 where 55 degrees are on the diagram?

19 A. Yes. I'd like to use my own protractor, if I might.

20 Q. Absolutely.

21 A. Let me get down so I don't block the jurors' view.

22 Q. Okay.

23 A. Again, I'm placing this line, this axis along the long axis
24 of the car as best I can. What do you want me to show first?

25 Q. Let's show 30 degrees. Can you move the bottom of it up to

1 the driver's side of the vehicle?

2 THE COURT: For the record, the witness's protractor
3 is of a different sort than counsel's.

4 MR. GALIPO: There's no question of that.

5 THE COURT: His protractor is adjustable in some way
6 and not fixed in one position.

7 Q. Is that 30 degrees?

8 A. Let me double-check. That's 30 degrees indicated and that
9 would be the rotation of the door.

10 Q. Okay. You would agree, if the door was open to 30 degrees
11 at the time of the shooting and we extended this protractor out
12 to the sidewalk, then Officer Paine could not have made this
13 shot standing in the area of 618; would you agree?

14 A. Yes.

15 Q. Let's go to 55 degrees.

16 A. Okay, let's place it on the graphic again.

17 Q. You believe that's 55 degrees?

18 THE COURT: If possible, can you angle that a little
19 bit? There's all sorts of people in the courtroom trying to
20 see what's going on. Too far.

21 MR. GALIPO: Is that good?

22 THE COURT: Better.

23 A. That's 55 degrees, as I indicated.

24 Q. Let me show you again, 55 degrees.

25 Okay. Now, at 55 degrees you would agree Officer

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1 Paine could not make the shot from 618?

2 A. Somewhere from --

3 Q. Hold it in the area. If you extend that line out, we're
4 coming to an area behind parking space 2037, are we not?

5 A. So you're saying somewhere in this area? Where I'm
6 indicating between 618 and to the right of 620, is that what
7 you're --

8 Q. My first question is, if we extend the line out as you have
9 it, we're into the next -- as we meet the sidewalk, we're into
10 the next parking space, behind the next parking space, correct?

11 A. Yes, we are.

12 Q. And unless the shooter was on the left of that diagram or
13 the west of this line, assuming you had a 55-degree angle, the
14 shooter could not have made the shot with Mr. Boyd positioned
15 in the area where the model is in your car?

16 MR. LOEBS: Objection as to "west of this line,"
17 vague.

18 MR. GALIPO: To the left of it?

19 THE COURT: Okay.

20 Q. Do you agree?

21 A. No. You can still shoot, get a shot from there.

22 Q. Without hitting the door?

23 MR. LOEBS: Your Honor, he's interrupting the
24 witness's testimony.

25 Q. I apologize.

Jason - Recross

1 A. I'm not sure where you're indicating. You're saying from
2 here to here can he get a shot in?

3 Q. Correct. Without hitting the door.

4 A. Not the way this is laid out, no.

5 Q. And you laid this out to scale, you've already told us this
6 diagram's to scale?

7 MR. LOEBS: Objection, argumentative.

8 THE COURT: Overruled.

9 A. Yes.

10 THE COURT: Assuming that was a question.

11 MR. GALIPO: That's fine.

12 THE COURT: Thank you, Mr. Jason. You may resume the
13 stand.

14 BY MR. GALIPO:

15 Q. How close -- were you the photographer on the picture in
16 U-5?

17 A. Yes.

18 Q. How close were you when you took that picture to the
19 driver's side door?

20 A. I don't know exactly. Maybe 10 feet, 12 feet.

21 Q. Any reason why you didn't take a picture from 24 feet so
22 you could duplicate the angle that you believe Officer Paine
23 had?

24 MR. LOEBS: Objection.

25 A. I wasn't trying to show the exact field of view from 24

1 feet. Just -- with the lenses you're using, it's hard to
2 duplicate that, the human vision. I'm just trying to show the
3 area of the body that would be exposed while seated on the
4 floorboard that way.

5 Q. With reference to the body moved -- moving, Mr. Loeb asked
6 you if the body could be moving. Would you agree that with
7 respect to the orientation of Mr. Boyd's body, with regard to
8 the shot to the abdomen, he would have had to have been turned
9 further to the left than he would have had to sustain the
10 trajectory through the leg?

11 A. Could you ask that again? I'm sorry.

12 Q. Sure. Would you agree that with respect to the body,
13 Mr. Boyd would have had to have been turned further to his left
14 with respect to the shooter to sustain the trajectory to the
15 abdomen as opposed to the trajectory to the leg?

16 MR. LOEBS: Objection, vague; incomplete hypothetical;
17 calls for speculation.

18 THE COURT: Overruled.

19 MR. LOEBS: Your Honor, if I may, that completely
20 blocks my view if I'm sitting there.

21 THE COURT: If we're going to keep using these, they
22 should go back where they were so that counsel at least can
23 stay at counsel table.

24 MR. GALIPO: That is fine.

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1 BY MR. GALIPO:

2 Q. Do you have the question in mind, Mr. Jason?

3 A. I think I do. Let me attempt to answer it. Can you leave
4 that V5 -- I think that's U-5.

5 Q. You want me to leave this up? Sure. Will that help you?

6 A. I think you said the body would have to be rotated more
7 towards the left than indicated in that picture?

8 Q. Well, first of all, do you think the body would have to be
9 rotated toward to the left, as we see it in U-5, to get the
10 trajectory through the upper body?

11 A. No. But it could be. Doesn't have to be.

12 Q. Looking at the amount of rotation in the upper body in U-5
13 and comparing it to the angle of the door, and then looking at
14 your animation, does it look to you that the body in W-8 is
15 turned more to the -- more at an angle than it is in U-8?

16 MR. LOEBS: Object to the question as being vague.

17 Q. Okay, let me start again. Looking at the angle that you
18 have the upper body in W-8, does it appear to be turned more at
19 an angle than what you show the model to be in?

20 THE COURT: Don't cover them up then if you want him
21 to compare them.

22 Q. In U-5, looking at the two?

23 A. These are not supposed to be identical. They're just
24 general representations.

25 Q. My question is, Mr. Jason, does the body appear to be more

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1 at an angle in W-8, the upper body, than it does in U-5?

2 A. No, I don't think so.

3 Q. All right. By the way, in this picture -- where would the
4 right hand be, and I'm referring to W-8?

5 A. I don't have any data where the right hand was. I just
6 removed it from the graphic.

7 Q. You would agree that in your analysis, the right hand could
8 not be in an area that would affect the bullet strike to the
9 left hand?

10 A. That's correct.

11 Q. It would have to be out of the way?

12 A. That's a good point. Other than that, I don't know where
13 it was.

14 Q. With respect to the importance of seeing the -- strike
15 that.

16 Is it your testimony that the window shattered on that
17 car not from bullet strikes but from hitting the -- bullets
18 hitting the door?

19 A. It's certainly possible, yes.

20 Q. Well, it's possible. But given the fact that you have an
21 idea as to how many rounds were fired at the vehicle, do you
22 think it's more likely that a bullet hit one of the windows?

23 MR. LOEBS: Objection, your Honor. Argumentative.
24 And lack of foundation.

25 THE COURT: I will overrule. Jurors can ignore the

1 style.

2 A. This is not a probability issue. It's not saying if you
3 took a hundred cars and fired a thousand bullets at them you'd
4 have this happen. Could it happen in this case? Yes, it's
5 very likely.

6 Q. So when Mr. Loeb's was asking you the question, you weren't
7 telling us that that's how you think it happened, you're just
8 saying it's possible?

9 A. Yes, I'm saying that is possible that the window broke
10 from -- as the result of an impact from one of, one, two, three
11 bullets that struck either the door or into the body and
12 continued on to the door. Maybe the window itself.

13 MR. GALIPO: I'll be done within three minutes, your
14 Honor. That's good news for everybody.

15 I just need to mark one more exhibit, and whatever the
16 next one is, I'll go (a) and (b).

17 THE COURT: We'll now have 195(a) and (b), unless they
18 turn out to be the same as exhibits that were already marked.
19 In which case they won't be. Okay.

20 (Plaintiffs' Exhibits 195(a) and (b) marked for
21 identification)

22 MR. LOEBS: Can I see those again?

23 MR. GALIPO: Sure.

24 BY MR. GALIPO:

25 Q. Showing you what's been marked as 195(a) and (b), do those

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1 appear to be photos of the vehicle showing some of the bullet
2 strikes?

3 A. Yes.

4 Q. With regards to the bullets, seeing the vehicle in this
5 case, is part of your opinion regarding you could not see any
6 high velocity blood spatter in any pictures?

7 A. Part of the work that I do is I would examine a vehicle in
8 this type of situation to look for any type of evidence.

9 Q. In this case you couldn't see any high velocity blood
10 spatter in any crime scene photos; is that correct?

11 A. True.

12 Q. So do you know what happened to this vehicle between the
13 time the crime scene photos were first taken and the time you
14 first saw it in 2006?

15 A. I know that it was in the property of the police
16 department, in custody of them -- the property department.

17 Q. Would it be true that at least a couple years passed in
18 between the date of this incident and the time you saw the
19 vehicle?

20 A. Yes.

21 Q. Okay. Lastly, Exhibit 184.

22 A. Oh, okay.

23 Q. And I just have this question for you.

24 A. Yes.

25 Q. How did you determine what angle to put the door at when

Jason - Recross

1 you prepared that exhibit and gave it to Mr. Loeb's?

2 A. I don't remember. At that time, it wasn't important to me.
3 I just had the door open. I don't remember establishing any
4 particular angle at that time.

5 Q. And the fact that it turned out to be 58 degrees, very
6 close to the 55 degrees at the second detent, you think that
7 was just coincidental?

8 A. It could be. It could have been deliberate. I just knew
9 the door was open. I still don't know how far the door was
10 open at the time of the shooting.

11 Q. And do you have any idea how that photograph ended up in
12 the exhibit books in this case?

13 A. The graphic?

14 Q. Yes.

15 A. No, I don't.

16 MR. GALIPO: That's all I have.

17 THE COURT: Any further direct, Mr. Loeb's?

18 MR. LOEB'S: No.

19 THE COURT: Thank you, Mr. Jason. You're excused at
20 this time. And I suggest that you leave as quickly as possible
21 before they think of something else.

22 (Laughter)

23 THE WITNESS: Good idea, your Honor.

24 THE COURT: Thank you very much.

25 THE WITNESS: You're welcome.

1 (The witness exits the stand)

2 THE COURT: At long last we've concluded the testimony
3 of Alexander Jason. He have been there so long I no longer
4 think of him as Jason Alexander, which is I think of some
5 benefit anyway.

6 Now, ladies and gentlemen, we do have possibly some
7 kind of an interlude here between the witnesses. I'm not sure
8 exactly what for.

9 MR. GALIPO: I think it would be a good time for a
10 break. We have one quick issue to take up with the Court.

11 THE COURT: Okay. Well, then I'm giving the jury 20
12 minutes, and we'll proceed hopefully for no more than five.

13 (The jury exited the courtroom)

14 (In open court; jury not present)

15 THE COURT: The jurors have exited the courtroom.
16 What's this brief issue?

17 MR. GALIPO: Very quickly, your Honor, Mr. Loeb and I
18 have been talking about exchanging stipulations. He had a
19 piece of evidence regarding Officer O'Malley that he
20 inadvertently forgot to ask, and my tendency is to want to
21 agree so we don't have to recall Officer O'Malley. I have
22 Peter Barnett out in the hall. He was the gentleman who took
23 the photographs at the private autopsy showing the exit wound
24 to the thigh. As the Court will recall, I attempted to move
25 that in evidence since the witnesses had looked at that, but

1 there was a foundational objection. So I was hoping that we
2 can work out that stipulation so I can send Mr. Barnett on his
3 way and not have him to take the stand for three minutes to
4 say, Yes, I took the picture.

5 THE COURT: What's the situation, though? Is there an
6 agreement?

7 MR. LOEBS: This was raised to me two seconds before
8 the return from break on lunch. And I told Mr. Galipo that I'm
9 concerned on working on my direct, redirect of Mr. Jason, I
10 don't have time to consider that. And now we're just finished,
11 so I haven't had any additional time to consider his request.
12 Rather than just make a snap judgment, I'd like to have a few
13 minutes to consider that.

14 THE COURT: Why is that witness here?

15 MR. LOEBS: I don't know. Seems like something that
16 would be appropriate in their direct case rather than something
17 they'd bring up in the middle of ours.

18 MR. GALIPO: I called him because I didn't realize
19 there was going to be an issue regarding the autopsy
20 photographs that were --

21 THE COURT: But let's face it, I mean, that's not part
22 of the defendants' case that you overlooked something.

23 MR. GALIPO: I understand that, your Honor. I was
24 just trying to let the Court know because what I was going --
25 if we could reach an agreement both ways on the stipulations,

1 we're fine. If not, I was going to ask the Court if I could
2 have two minutes to put him on to open up for that one limited
3 purpose of getting at least a photograph of the exit wound.

4 THE COURT: Well, it does leave him to some amount of
5 questioning also, and what he did and how he took them and how
6 he happened to be there. Who is he? Why was he in the
7 autopsy?

8 MR. GALIPO: He's a criminal -- I think he's a
9 criminalist and a private investigator who does work.

10 THE COURT: Hired by the plaintiff?

11 MR. GALIPO: Correct.

12 THE COURT: And given access.

13 MR. GALIPO: Yes.

14 THE COURT: I don't know. There could be questioning.
15 I don't know if you intend to question him or not about this.

16 MR. LOEBS: Your Honor, he hasn't had his deposition
17 taken, he's not on their witness list, I have no idea what he's
18 going to say, he has expertise in different things that relate
19 to being a criminalist. I don't know, I know that there are
20 many things in those autopsy photographs that are vastly
21 different than the autopsy photographs that Dr. Smith took.

22 THE COURT: Like what?

23 MR. LOEBS: The injury to the head. The head wound,
24 for example, it's all gouged out. It's gouged out in the later
25 autopsy photographs. I think there are other injuries on the

1 shoulder that are gouged out. The wound to the leg is actually
2 opened up in the later autopsy photographs.

3 THE COURT: In other words, you're suggesting there
4 may have already been some work done on the decedent's body
5 before these pictures were taken?

6 MR. LOEBS: Yes.

7 THE COURT: I'm sure they didn't allow him to mutilate
8 the body himself.

9 MR. LOEBS: There was a woman who we did depose who
10 did the autopsy, and she described what she did and part of
11 what she did is opening up the -- and there are all sorts of
12 different -- I don't want to say damage, to be indelicate to
13 Mr. Boyd, but all sorts of different defects throughout the
14 photographs. So there's a huge concern regarding foundation
15 of -- and throwing it at me right now.

16 THE COURT: It isn't just open and shut. And I'm not
17 going to grant a request to put him on in the middle of their
18 case. I will tell you that, unless it was just absolutely
19 clear that nobody had any disagreement about it. Since there
20 is a disagreement, it seems to me at this point that you would
21 have to figure out some way to either work it in in the
22 rebuttal or otherwise.

23 MR. GALIPO: Okay, your Honor. And just so it's
24 clear, it's one picture of the thigh only. Just so Mr. Loeb's
25 knows. I'll show him the picture. Thank you.

1 THE COURT: You can show Mr. Loeb's the picture and see
2 if it makes any difference to him what you want to use.

3 MR. GALIPO: Sure. That's fine. I will, your Honor.

4 THE COURT: Why don't you show it to him now.

5 MR. GALIPO: I will.

6 THE COURT: You're looking for it. Okay.

7 MR. GALIPO: One second, I'm going to get Mr. Barnett.

8 (Pause)

9 MR. GALIPO: Okay. Here; and here's a second one.

10 (Pause)

11 MR. GALIPO: Apparently we're unable to reach an
12 agreement at this time, your Honor.

13 THE COURT: Do you want to just excuse that person?

14 MR. GALIPO: I have no choice, and he may be
15 unavailable tomorrow, which is a big concern of mine, but I'll
16 try to figure out what I'm going to do. I'm just letting the
17 Court know that's the situation.

18 THE COURT: Okay. All right. Then where are we with
19 either -- the so-called cross-examination of the videotaped
20 witnesses?

21 MR. GALIPO: I'm not going to do that at this time.

22 THE COURT: You're not?

23 MR. GALIPO: No, your Honor. They can go right to
24 their next witness.

25 THE COURT: Then that's Dr. Keram. And we broke at

1 about 2:45, so we've now lost about 10 minutes off the jury's
2 20-minute break, and it seems we ought to take a break at this
3 point. So we will.

4 MR. WIENER: 3:05, your Honor?

5 THE COURT: I try not to short-change the reporter, so
6 I guess 10 after.

7 And, Miss Lucero, can you tell the jurors that as
8 well. We're losing a lot of time every day from our regular
9 hours. We're not getting very much time out of any given day.

10 (Afternoon recess)

11 DEPUTY CLERK: Please come to order.

12 THE COURT: Okay, let's bring in the jury.

13 (The jury entered the courtroom)

14 (In open court; jury present)

15 THE COURT: All right. The jurors are back. And
16 ladies and gentlemen, we do have another witness then to call
17 at this time.

18 Is this going to be your witness, Mr. Wiener?

19 MR. WIENER: Yes, your Honor. The defendants call
20 Dr. Emily Keram.

21 (Witness sworn)

22 DEPUTY CLERK: Please be seated.

23 State your full name for the record, and spell your
24 last name, please.

25 THE WITNESS: Emily Alyssa, A-l-y-s-s-a, Keram,

1 K-e-r-a-m.

2 EMILY ALYSSA KERAM,

3 called as a witness by the Defendants,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WIENER:

7 Q. Good afternoon, Dr. Keram.

8 A. Good afternoon.

9 Q. What is your profession?

10 A. I'm a psychiatrist.

11 Q. Are you a medical doctor or an M.D.?

12 A. Yes, I'm an M.D.

13 Q. And where do you currently work as a psychiatrist?

14 A. I work half time at an outpatient clinic in Santa Rosa,
15 California that's a satellite of the San Francisco VA. So half
16 time I'm employed at the VA. And the other half I do a variety
17 of things. I have a very small practice of my own where I see
18 my own patients. I do this type of medical/legal evaluation.
19 I teach in the UCSF psychiatry and the law program. We teach
20 two psychiatrists each year who are interested in becoming
21 forensic psychiatrists, and that's a year-long training
22 program.

23 Q. We'll get back to the specifics. Just wanted to get a
24 general overview.

25 A. Okay.

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1 Q. And, Dr. Keram, as part of your practice as a psychiatrist,
2 have you developed an expertise in law enforcement contact with
3 people who are mentally ill or under the influence of drugs?

4 A. Yes, I have.

5 Q. And as part of your work as a psychiatrist, have you
6 developed an expertise in people who attempt to provoke the
7 police to shoot them as a form of suicide?

8 A. Yes, I have.

9 MR. GALIPO: I'm going to object as lacking foundation
10 that she has developed an expertise based on the state of the
11 evidence so far.

12 THE COURT: Okay. Well, at this point it's
13 preliminary, and at some point if someone forgets to ask her
14 questions about the subject, if you feel it's appropriate to
15 object to her lack of expertise, you can do that. Overruled.

16 Q. Is this also known as "suicide by police" or "suicide by
17 cop"?

18 A. Yes, it is.

19 Q. Okay. Have you formulated, without stating it, have you
20 formulated an opinion about whether Cammerin Boyd committed
21 suicide by police on May 5th, 2004?

22 A. Yes, I have.

23 Q. We'll get back to that.

24 A. Uh-huh.

25 Q. I want to ask you some questions about your background and

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1 professional areas. Could you just describe for the jury your
2 educational background starting with college and going up
3 through your residency and fellowship?

4 A. Sure. I attended and graduated from Duke University with a
5 bachelor of science in zoology. I graduated a little bit
6 early, in December of 1981. I then attended the University of
7 North Carolina at Chapel Hill's School of Medicine, and I
8 graduated there with a medical degree, an M.D. I graduated in
9 1988.

10 I then did a year-long internship that is required for
11 anybody who wants to be a psychiatrist. You do general
12 internal medicine, neurology and also some psychiatry. Then I
13 did a residency also at UNC also in psychiatry, and I wanted to
14 be a forensic psychiatrist, so I did a year-long fellowship in
15 forensic psychiatry with the United States Department of
16 Justice in Butler, North Carolina, and finished that in 1992.

17 Q. Are you board-certified?

18 A. Yes, I am.

19 Q. In what area or areas?

20 A. Board-certified in psychiatry and neurology, and then I
21 also have a subspecialty board certification in forensic
22 psychiatry.

23 Q. Okay. Could you briefly tell the jury what is board
24 certification?

25 A. That is a process by which any psychiatrist or any of the

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1 medical specialties or subspecialties can demonstrate a level
2 of proficiency that's certified by a board. So you do, in
3 addition to having to undertake the training that I've
4 undertaken in a recognized, accredited program, you also take
5 an examination within the field or the subspecialty. And in
6 addition, I've also done -- acted as an examiner for the
7 general adult psychiatry boards and written questions for the
8 psychiatry subspecialization boards.

9 Q. Are you licensed as an M.D.?

10 A. Yes, I am.

11 Q. In the State of California?

12 A. Yes.

13 Q. Can you give the jury a general overview of your history as
14 a practicing clinical psychiatrist since you became a
15 psychiatrist until today, and again just an overview?

16 A. Sure. After I finished my fellowship and residency, I
17 moved to California in July of 1992. And I started a private
18 practice in Santa Rosa. And I did that private practice for
19 four years. Most of my time was spent treating patients, but I
20 also did legal-medical evaluations, civilian, criminal during
21 that four-year period.

22 In 1996, in August, the VA opened the Santa Rosa
23 community-based outpatient clinic, and I was hired to be the
24 first director of that clinic, and I ran that clinic both as an
25 administrator, and then I also supervised the staff there and

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1 saw my own patients there for four years.

2 In 2000, UCSF started their own fellowship training
3 program in forensic psychiatry, and I was recruited to join the
4 faculty there; so I left the VA and joined the full-time what
5 we call paid faculty at UCSF, and helped get the fellowship
6 going. Taught in the fellowship full-time for four years.
7 During those four years I continued to see patients both on an
8 outpatient basis and also attending on the inpatient unit at
9 UCSF. And, of course, continued to do research and teaching
10 and medical/legal civil and criminal cases.

11 Then I left the full-time faculty in -- at UCSF, I got
12 really worn out by commuting from Santa Rosa. I went back to
13 the VA in May of 2004. So since 2004, I've been there half
14 time and doing my other practice work the other half.

15 Q. You mentioned that over the years that you have actually
16 provided clinical treatment to patients under your psychiatric
17 care?

18 A. Yes.

19 Q. Can you just give the jury an overview of the type of
20 psychiatric care that you have provided to patients, what kinds
21 of patients you see, how you treat them?

22 A. It's different in the different settings, and I'll just
23 concentrate on after I finished my training. The first four
24 years I was in my own private practice, the majority of my
25 patients were female. Over that four-year period I saw

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1 approximately 300 or so patients. The majority of the
2 diagnoses I was treating were depression and anxiety. Some
3 posttraumatic stress disorder. Some substance abuse.

4 Then when I went to the VA, obviously my -- the type
5 of patient I saw changed. First of all, most of the patients
6 at the VA were male. And approximately, I think, 65 to 75
7 percent over that initial time I was there were veterans who
8 had combat trauma, PTSD. I also saw a large amount of
9 substance abuse diagnoses, depression, anxiety, schizophrenia,
10 bipolar disorder. Pretty much the full gamut of psychiatric
11 illness. And I continue to see that type of patient at the VA
12 now.

13 While I was at UC full-time, I saw more acute patients
14 on the inpatient unit, people who had primarily depression and
15 were suicidal but also had psychotic illnesses like
16 schizophrenia and needed to be hospitalized for their safety.

17 Q. And a little later on we'll talk about your specific
18 specialization in suicide by police, but we'll get to that.

19 How many patients are currently under your care as a
20 psychiatrist?

21 A. Over 300.

22 Q. Can you estimate how many patients you've treated over your
23 career as a psychiatrist?

24 A. Over a thousand.

25 Q. Have you ever supervised other psychiatrists?

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1 A. Yes, I have. I have supervised psychiatrists when I ran
2 the VA clinic. For the first four years it was up and running,
3 I had three psychiatrists who worked for me. I also supervised
4 psychologists and nurses. And then while I was at UCSF, I
5 supervised medical students and residents who were on the
6 inpatient unit. So I supervised psychiatrists in that direct
7 patient care setting, and also, of course, supervised the
8 fellows' cases in medical/legal evaluations, both criminal
9 evaluations and civil evaluations. And then also helped
10 oversee research projects that they took on if they took on an
11 area of interest that was within my specialization.

12 Q. You mentioned that you have provided care to patients who
13 are suicidal?

14 A. Yes.

15 Q. Could you give an overview of your experience in treating
16 suicidal patients?

17 A. I think most psychiatrists treat patients who have suicide
18 because most of us treat -- or who have suicidal thoughts or
19 ideas or even suicidal attempts because most of us treat
20 patients who have risk factors for suicide. So you know that's
21 something that all of us start to do early on in our training,
22 treat suicidal patients. And that would have been beginning in
23 1988.

24 You know, through the present time I continue to treat
25 patients who are suicidal, in- and outpatient settings, at this

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1 point. If one of my patients becomes acutely suicidal, in
2 other words, if either they think they won't be able to
3 maintain themselves safely as an outpatient or I think that
4 they may not, even if they disagree, then I will work to have
5 them hospitalized usually at the San Francisco VA.

6 Q. Now, you mentioned before that you're board-certified not
7 just in psychiatry and neurology but also in something called
8 forensic psychiatry. Can you just explain to the jury what is
9 forensic psychiatry?

10 A. Forensic psychiatry is any type of mental health or mental
11 illness issue that arises within a legal context. So it's
12 actually a very broad field. We do everything from this type
13 of evaluation, a medical/legal evaluation, in civil cases or
14 criminal cases. We consult to legislators who may be writing
15 or revising laws that have to do with mentally ill people,
16 either involuntary commitment or looking at insanity defense,
17 or new areas of law like sexually violent predators and how
18 they should be managed.

19 We do research in the areas that comprise forensic
20 psychiatry and -- we treat people who are incarcerated. So
21 that's mental health treatment in a custodial setting. We may
22 also provide consultation or training to law enforcement
23 agencies or governmental agencies.

24 Q. And in forensic psychiatry, it is a board-certified area of
25 medicine?

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1 A. Yes.

2 Q. You've been doing forensic psychiatry for how many years?

3 A. I started my fellowship in July of 1991. So all the cases
4 I did in that next year would have been supervised. And then
5 I've developed my own practice in forensic psychiatry the
6 following July 1992.

7 Q. And the areas of forensic psychiatry that you explained to
8 the jury a minute ago, have you worked in those areas as a
9 forensic psychiatrist?

10 A. I have never done legislative consultation, but the other
11 areas, yes, I have.

12 Q. So you've worked on, for example, cases relating to an
13 insanity defense.

14 A. In fact, I'm a coauthor of the national practice guidelines
15 in how to conduct insanity defense evaluations. I can speak a
16 little bit more about that if you'd like.

17 Q. Those are guidelines that you helped draft?

18 A. Yes.

19 Q. Those are guidelines for other psychiatrists to use?

20 A. Psychiatrists and also psychologists, and -- in some
21 jurisdictions, psychologists perform insanity defense
22 evaluations.

23 Q. Does insanity also cover the evaluation of the
24 psychological state of deceased persons?

25 A. Yes, there are a number of contexts in which that situation

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1 would arise.

2 Q. We'll get back to that area, of how you would conduct that
3 area of evaluation.

4 You have mentioned that you did some teaching for
5 other psychiatrists.

6 A. Yes.

7 Q. Can you just explain to the jury your teaching experience
8 in terms of teaching other psychiatrists?

9 A. As a faculty member of the psychiatry and law program, when
10 I was on the full-time faculty I was responsible for teaching
11 the entire criminal section of our didactic curriculum and also
12 several of the civil topics as well. I continue to teach in
13 the psychiatry and law program, although not the full spectrum
14 that I was before.

15 I also organize and teach what we call a mock trial
16 for our fellows to give them experience in learning how to
17 write reports and testify.

18 The teaching that I've done hasn't been at UCSF, it's
19 been at professional meetings and also for law enforcement
20 agencies. I can speak about those if you like.

21 Q. Why don't we first talk about your teaching at professional
22 meetings.

23 A. I've given presentations, both at the American Psychiatric
24 Association, and then my sort of home professional
25 organization, which is the American Academy of Psychiatry and

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1 the Law. And the topics that I've taught on include how to
2 develop training curriculum for teaching law enforcement
3 officers how to interact with patients who may be emotionally
4 disturbed or abusing substances. I've given several talks on
5 suicide by police, different aspects of that phenomenon.

6 I've also given talks in those professional
7 organizations on ethical considerations that forensic
8 psychiatrists should bear in mind when they're doing
9 consultations to law enforcement agencies or teaching or
10 working with a law enforcement agency.

11 Participated as a debater in a debate about forensic
12 psychiatrists not participating in law enforcement
13 interrogations. I think those are the majority of the topics.

14 Q. And you mentioned that you provided training to law
15 enforcement agencies, correct?

16 A. Yes.

17 Q. And can you just give the jury an overview of the training
18 that you have provided to law enforcement agencies?

19 A. Uh-huh. At the FBI academy, I've delivered a paper that I
20 wrote, coauthored, on suicide by police. I was -- one of my
21 areas of interest in forensic psychiatry is in risk assessment
22 and risk management. So I also helped develop through
23 trainings and discussion a manual that was public -- that the
24 FBI published on workplace violence assessments.

25 In addition, I was asked to serve as a member of a

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1 committee for POST.

2 Q. You can say what POST is.

3 A. The California legislature sets up various commissions, and
4 one of the commissions is called POST. It's the Police
5 Officer's Standards and Training Commission. It's a commission
6 that is charged with developing all of the different subject
7 areas that law enforcement officers need to be proficient in,
8 and then developing training standards for those areas.

9 And back in about 2000 or 2001, the legislature passed
10 a law that required that POST develop training curricula in
11 mental health for law enforcement officers. So I was asked to
12 join that committee. And we developed -- we worked for about a
13 year and we developed a training program to teach law
14 enforcement officers how to interact with emotionally
15 disturbed, developmentally disabled, substance-abusing people.
16 And I've trained on those topics, and also suicide by police,
17 in a large number of -- well, a number of jurisdictions
18 throughout California. I guess large is a relative term.

19 Right now in -- I teach in the San Francisco crisis
20 intervention training, which is a quarterly training that the
21 San Francisco Mental Health Board provides to the San Francisco
22 Police Department. So I've been doing that for about
23 six-and-a-half years. Since the first -- I was involved in the
24 curriculum for that.

25 I also have taught in the San Diego Police Department,

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1 the Sonoma County law enforcement agencies -- I did that as a
2 joint training with mental health clinicians; with Oakland
3 Police Department, and a few other agencies as well.

4 Q. Okay. Now, have you -- as a psychiatrist, have you
5 published any articles or research?

6 A. Yes.

7 Q. Can you give the jury an overview of your publication
8 history?

9 A. Yes.

10 Q. Not every single article but maybe the number and the areas
11 you've published in.

12 A. I've published over a half a dozen articles as the primary
13 or sole author. Most of those in peer-reviewed journals. I've
14 published a paper on suicide by police; a paper and developing
15 curriculum for, as I said before, you know, how to teach law
16 enforcement officers mental health issues; wrote up an
17 editorial on medical ethics and terrorism investigations.

18 That type of thing.

19 Q. Have you participated in other publications, even if you
20 weren't the lead author on psychiatric research?

21 A. Yes.

22 Q. And are you involved with any professional committees or
23 organizations as a psychiatrist? You mentioned a few, but if
24 you could give a brief overview of that.

25 A. As I said, my home organization is the American Academy of

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1 Psychiatry and the Law, and I've served on a lot of different
2 committees there. Currently I'm the chair of the Law
3 Enforcement Liaison Committee. I've also chaired the
4 membership committee there, and served on actually the
5 executive council, which is about a half a dozen people, served
6 as both the council and the secretary, and one year I served as
7 the program chair, organized the annual meeting. That's a
8 scientific meeting that we have.

9 Q. Now, Dr. Keram, I want to ask you some questions just
10 generally about suicide by police or suicide by cop, not
11 referring to Cammerin Boyd, but just what it is.

12 A. Uh-huh.

13 Q. So what is "suicide by police"?

14 A. Suicide by police is an event in which a person poses a
15 threat of serious bodily injury or death to a citizen or law
16 enforcement officer with the intent of posing serious physical
17 danger to them, by law enforcement.

18 Q. How long has the profession been aware of this phenomena?

19 A. The phenomenon of suicide by police was first recognized in
20 the 1980s. So both law enforcement, medical, pathologists,
21 were aware for the past 23 years or so. Law enforcement began
22 to do research into suicide by police and publish articles, in
23 the '80s, and you started to see the medical community begin to
24 see research and publish in suicide by police beginning in the
25 I believe the early '90s on through to this day.

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1 Q. And what's the earliest example of suicide by police you've
2 become aware of?

3 A. When we were writing the insanity defense, one of the
4 things we were doing was write the entire history of the
5 insanity defense, so looking back at the case law of insanity,
6 we found a case, the shooting actually occurred in 19 -- I'm
7 sorry, 1798, that was an example of an attempted suicide by
8 police. That's the earliest one that we found. It's been a
9 phenomena that's been around for quite a long time.

10 Q. Is this phenomenon, suicide by police, is this something
11 that's generally recognized to exist by the psychiatric
12 profession?

13 A. Yes.

14 Q. Okay. And is it recognized to exist by treating
15 psychiatrists; in other words, clinical psychiatrists?

16 A. Yes.

17 MR. GALIPO: No foundation; calls for speculation.

18 THE COURT: Overruled.

19 Q. You said it began to be studied at some point in the
20 mid-1980s?

21 A. Yes.

22 Q. Has a literature, whether it's a medical literature or a
23 nonmedical literature developed around the concept of suicide
24 by police?

25 A. Yes.

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1 Q. First, let's talk about the medical literature. Can you
2 just give the jury an overview of the medical literature of
3 suicide by police, not saying what the conclusions are of each
4 publication but just an overview of that literature?

5 A. In the earliest cases where it's mentioned as a concept,
6 it's not the primary focus of the paper. The paper is talking
7 about perhaps law enforcement deaths, officer-involved
8 shootings or victim-precipitated homicide. That was in the
9 '50s. So the earliest papers don't call it "suicide by
10 police." They mention it as a subset of the thing being
11 studied.

12 The earliest medical literature that alludes to the
13 phenomena directly began to be published in the '90s, and
14 there's -- there's perhaps a half a dozen to a dozen papers
15 published in peer-reviewed journals then.

16 Q. When you say "peer-reviewed journals," what do you mean by
17 that?

18 A. I'm a peer reviewer for our journal, the Journal of the
19 American Academy of Psychiatry and the Law. So what we as peer
20 reviewers is, we are sent papers generally within our area of
21 expertise. If we're not, we generally send them back. And the
22 purpose of peer review is to make sure that the journal is not
23 publishing opinion, that we are in fact publishing facts,
24 studies that can be replicated with the same findings.

25 So peer review consists of making sure if there's any

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1 statistical analysis in a paper, that the statistics were
2 analyzed properly, so we have an independent statistician
3 review the data that was collected.

4 There are some descriptive studies which won't have a
5 statistical analysis in them. As a peer reviewer, I look at
6 the methodology, making sure that good epidemiological
7 principles were applied to the methodology, that the question
8 that's posed can really be answered the way the study was set
9 up, and that the reasoning or logic that was used in arriving
10 at conclusions is sound.

11 Once I turn in my peer review -- it's also sent out to
12 a number of peer reviewers -- I will criticize the paper, it
13 will go back to the author. At that point the author will make
14 the changes that we recommend they make or they may let it lie
15 but if they do revise the paper they'll send it back to us for
16 either revision or acceptance again.

17 Q. So when you read in the newspaper about studies in the New
18 England Journal of Medicine or Journal of the American Medical
19 Association, are those examples of peer-reviewed medical
20 journals?

21 A. Yes, they are.

22 Q. Putting aside the medical journals, have there been
23 articles or studies relating to suicide by police or suicide by
24 cop in law enforcement-related journals?

25 A. Yes, there have been. Quite a few actually. And some of

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1 those journals are peer-reviewed. They're in the field of
2 criminology. And some of them will be sort of in more -- I
3 don't know what terminology to use. Sort of like newspapers
4 for law enforcement officers, you know, specific to the
5 profession but not peer-reviewed.

6 Q. Any estimate of how many articles in the subject or studies
7 have been published in the law enforcement journals or papers?

8 A. Hundreds of them.

9 Q. Now, are you familiar with the studies that have been done
10 related to suicide by police?

11 A. Yes.

12 Q. And what's the largest study in terms of how big was the
13 largest study in terms of cases studied?

14 A. The largest study that's been published to date, although
15 there's another one in the pipeline, but the largest one that's
16 been published to date was conducted in the Los Angeles County
17 Sheriff's Department. The researchers looked at 10 years of
18 officer-involved shootings, there were 437 shootings that
19 occurred during that period. And so that was the biggest group
20 of officer-involved shootings that was looked at in which they
21 applied a definition of "suicide by police" to see what
22 percentage were and looked at that subpopulation within the
23 larger group.

24 Q. And as part of that study, for example, did they draw
25 conclusions about characteristics of suicide by police, or

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1 people who engage in that?

2 A. Yes.

3 Q. And we'll get back to some of those specifics.

4 A. Sure.

5 Q. Is there training for law enforcement officers for suicide
6 by police? Does that exist?

7 A. Yes.

8 Q. And is that in California?

9 A. Yes.

10 Q. And are there states outside of California that have
11 agencies that provide training on suicide by police?

12 A. Yes.

13 Q. You referred to POST before, Peace Officer Standards and
14 Training. Does POST in California have a curriculum for
15 suicide by police?

16 A. Yes, they do. They've developed what they call a
17 telecourse; in other words, a course that's on the videotape
18 format, in 1999 called "Suicide by Cop" and any law enforcement
19 agency in -- it was obviously developed for California, but any
20 law enforcement agency throughout the United States can request
21 the telecourse be sent to them.

22 Q. Okay. Now, in your view, is it important to train officers
23 related to suicide by police?

24 A. Yes.

25 Q. Why is that?

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1 A. The primary hope in developing training curricula is that
2 we may be able to tell the officers something in the training
3 that they could use to prevent the incident. We can talk
4 about, you know -- the reason I say "hope" is that the
5 incidents tend to unfold very rapidly and often they can't --
6 there's not a lot of options that they have. But, again, the
7 primary reason is to prevent the incidents.

8 Q. Okay. Are there episodes of suicide by police where the
9 officers cannot prevent it from happening?

10 A. Certainly.

11 MR. GALIPO: Objection, calls for speculation; no
12 foundation.

13 THE COURT: I'm sorry, I missed that. I'm just going
14 to take a look.

15 I'll sustain.

16 Q. In your professional experience with suicide by police,
17 which we'll discuss in a moment, have you encountered either
18 personally or through the literature situations where in your
19 professional -- or where it appeared to you that the officers
20 were unable to prevent a suicide by police from occurring?

21 MR. GALIPO: Same objection: Calls for speculation;
22 no foundation.

23 THE COURT: I don't know why it's relevant. I'll
24 sustain.

25 Q. Now, what percentage of officer-involved shootings -- or

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1 let me ask you this: In terms of the percentage of
2 officer-involved shootings that are believed to be suicide by
3 police, or attempted suicide by police, has that been studied
4 in terms of putting a percentage on that?

5 A. Yes, that was something that some authors looked at. The
6 Hudson study is the study in the LA County Sheriff's Department
7 I mentioned before.

8 Q. That's 10 years of officer-involved shootings?

9 A. Correct.

10 Q. What percentage of officer-involved shootings are believed
11 to be suicide by police?

12 MR. GALIPO: I'll object. There's no foundation.
13 Also, calling for speculation as to who believes that.

14 THE COURT: You mean who studied that?

15 MR. WIENER: I asked for her opinion, your Honor.

16 MR. GALIPO: Same objection.

17 THE COURT: If her opinion is based on a study, then
18 what you're really asking is what the study determined.

19 What was the nature of the objection?

20 MR. GALIPO: I can't remember the specific question.
21 But calling for speculation; no foundation, the way it was
22 phrased.

23 THE COURT: Well, I'll sustain the objection. You
24 need to lay some foundation here as to whether the witness has
25 an independent opinion based on work she's done, whether she's

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1 just studied this; if so, what the studies show -- something
2 other than just sort of out of the blue.

3 BY MR. WIENER:

4 Q. Okay. Dr. Keram, yes or no, do you have an opinion about
5 the percentage of officer-involved shootings that are suicide
6 by police or attempted suicide by police?

7 A. Yes, I do.

8 MR. GALIPO: I --

9 Q. And without saying what the opinion is, how have you
10 developed that opinion, based upon what?

11 A. Based on my review of the literature, and also a research
12 study that we conducted at UCSF as well.

13 Q. And what is the percentage of officer-involved shootings
14 that in your opinion are either suicide by police or attempted
15 suicide by police?

16 MR. GALIPO: I'll object. There's no foundation as to
17 all officer-involved shootings.

18 THE COURT: Are you asking her what the study showed?

19 MR. WIENER: Based on her own study.

20 THE COURT: Okay, based on her own studies and
21 whatever else that she read, what did they show?

22 MR. WIENER: Okay.

23 THE COURT: All right. Because in any given
24 population they'd have other showings.

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1 BY MR. WIENER:

2 Q. Based on what you've done and the literature that you've
3 reviewed and relied on as a professional area, what is your
4 opinion in terms of the percentage of officer-involved
5 shootings?

6 THE COURT: It's the same question. It's -- you're
7 asking as a totality in the whole world all the time what's the
8 percentage that occurs.

9 MR. WIENER: I'll make it more specific, your Honor.

10 THE COURT: As opposed to when they did their study,
11 what it showed.

12 BY MR. WIENER:

13 Q. What did the Hudson study show -- is the Hudson study the
14 LA County Sheriff's Department study, is that one of the
15 studies that you rely on for your opinion on this subject?

16 A. Yes.

17 Q. And what did the Hudson study show in terms of the
18 percentage of officer-involved shootings that are believed to
19 be suicides by police or attempted suicides by police?

20 A. Overall the study found that 11 percent of officer-involved
21 shootings in that 10-year period were suicide by police. They
22 also looked at the percentage of shootings each year that were
23 suicides by police and what they found was that that number
24 increased over time, that the number in the last year was 26
25 percent. The authors had two reasons why they thought that the

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1 numbers were increasing over time.

2 Q. What were those reasons?

3 A. One was that when they looked at the information that they
4 were given to review from year to year, the information in each
5 case was larger as time went on. And that was something that
6 was certainly found in our study as well. So that there was
7 more known about the factors that led to the shooting.

8 And the other was that presence of increased mandatory
9 lengths of criminal sentences was also thought to be a factor
10 that increased the number of officer-involved shootings that
11 were thought to be suicides by cop -- by police, excuse me.

12 Q. Why would that be significant?

13 A. Because one of the known risk factors for suicides by
14 police is people not wanting to go back to prison.

15 Q. Okay. Now, in terms of the Hudson study, why don't you
16 briefly tell the jury, since this was the largest study, what
17 the methodology was, how they conducted that study?

18 A. Uh-huh. The first thing they did was develop what we call
19 selection criteria, which means what are they going to require
20 be found in a file in order for that file to be -- that
21 shooting to be considered by -- to be considered a suicide by
22 police. So that's the first thing that they developed.

23 And they applied those requirements to the 437
24 shootings and found out 44 of the shootings met those
25 requirements.

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1 Then they looked at those 44 shootings to find out
2 things like what was the threat that the -- I'll call them the
3 precipitator, because some of the people survived the shootings
4 and some didn't, so rather than call them decedents or -- I'll
5 call them the precipitator of the lethal force. So they looked
6 to see what the action was of the precipitator that ended with
7 law enforcement using lethal force.

8 They looked at demographics, so age, gender. They
9 looked at substance abuse history, psychiatric history. They
10 looked at what risk factors for suicide the person might have
11 had. There was a lot of studies about the mechanics of the
12 incident. The -- at the time that law enforcement was actually
13 on scene before the lethal threat was actually presented to
14 them. There were probably a hundred or so variables that they
15 included.

16 Q. Now, why might -- in your experience, why might someone
17 choose to commit suicide by police rather than some other form
18 of suicide like jumping off a bridge or poisoning oneself or
19 the other methods that we may be familiar with?

20 MR. GALIPO: Objection. Calls for speculation; no
21 foundation.

22 THE COURT: Overruled.

23 A. People choose suicide by police for a variety of reasons,
24 and those reasons have been described in the peer-reviewed
25 literature. So I rely both on my review of the literature but

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1 also on what some of my patients have told me who have thought
2 about attempting a suicide by police, and in fact one of my
3 patients went through with an attempt.

4 Some people will choose suicide by police because they
5 have religious convictions against suicide, so they feel if
6 they can get somebody else to kill them, they feel they
7 preserve their afterlife in heaven. Other people may choose
8 suicide by police -- this is what one of my patients told me,
9 he looked at me and he said, "Dr. Keram, you're an idiot, they
10 have the guns and if they shoot, it's because they think I'm
11 going to hurt them enough that they want to shoot me, they'll
12 do the job right."

13 So some people, my patient told me, he told me that he
14 might, his words, screw it up, that he might not be successful
15 in the way that he did it or he might chicken out, so he relied
16 on the officer to do the job for him properly. Other people,
17 both in the literature and the information my patients give me,
18 choose to commit suicide because they hate the police and they
19 want to inflict psychological damage on the police.

20 I have I had a patient who's since passed on, not from
21 suicide by police but other reasons, tell me that he wanted the
22 police to shoot and kill him because he hated the police. He
23 was a member of the Hell's Angels, and he had felt throughout
24 his riding clear that the police had harassed him
25 unnecessarily, had used excessive force against him,

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1 essentially that the police were thugs, and you know, he wanted
2 to engage in a sort of cat-and-mouse psychological game with
3 them as his method of suicide.

4 Other reasons why people choose the police to shoot
5 and kill them is the methods of suicide that has been
6 recognized in the literature include not wanting to go back to
7 prison for a lengthy prison sentence; preserving the
8 possibility for a family member to prevail in civil litigation
9 following the suicide; there are people who are delusional and
10 they wanted the police to kill them for delusional reasons.
11 Actually that case in 1798 I found was a result of that. In
12 other words, delusional having ideas that are not really based
13 in reality.

14 I think those are the majority of the reasons.

15 Q. Now, you've touched on this and we'll get to it officially.
16 I want to talk about your experience in the area of suicide by
17 police. Can you describe to the jury your experience in terms
18 of treating patients who have either attempted it or thought
19 about it, just an overview for the jury?

20 A. Yeah. You know, it's always a shock to meet a patient
21 who's suicidal and you want to very much talk about it, and in
22 order to do it you have to understand what their thinking is.
23 So even though it's uncomfortable, you have to really talk to
24 them about what their suicidal plan is, even though it's
25 anxiety provoking for you.

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1 The first patient that I discussed this with was a
2 Vietnam veteran who had been chronically suicidal. He had been
3 in Vietnam, done a number of things as a 18- or 19-year-old
4 that he felt he couldn't live with. And he told me that he --

5 MR. GALIPO: I'll object as calling for hearsay and
6 violating the psychiatrist/patient privilege.

7 THE COURT: I think the patient has to raise the
8 privilege, not a third party. But the patient is not being
9 identified by name in any way.

10 What was the rest of the objection, other than
11 psychiatrist/patient privilege?

12 MR. GALIPO: Hearsay, your Honor.

13 THE COURT: Hearsay. Well, an expert witness can rely
14 on hearsay that would otherwise not be admissible if it's the
15 type of thing that an expert ordinarily would rely on in
16 forming an opinion. It isn't clear whether you're asking this
17 witness to simply recount anecdotes or whether there is an
18 opinion here that this is supporting, so I'll sustain the
19 objection to that extent.

20 MR. WIENER: Your Honor, I was intending to be more
21 general than perhaps -- my question was interpreted. I'll
22 rephrase the question.

23 THE COURT: Okay. Give it a try.

24 BY MR. WIENER:

25 Q. Let me ask you more specifically. Have you treated

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1 patients as a psychiatrist who have attempted or contemplated
2 suicide by police?

3 A. Yes.

4 THE COURT: Just looking for a yes or no.

5 MR. WIENER: Yes.

6 Q. And how many patients have you treated?

7 A. Specifically expressing a desire to commit suicide by
8 police?

9 Q. Ranging the gamut from trying it all the way down to
10 talking about it a lot or talking about it a little.

11 A. Half a dozen to a dozen.

12 Q. Have you had any patients who have actually attempted
13 suicide by police?

14 A. I have had patients practice an attempt.

15 Q. Okay. And practicing, we'll get to that concept. Is that
16 a form of planning?

17 A. Yes.

18 Q. And you had patients who have attempted suicide by police?

19 A. Yes.

20 Q. Have you done any trainings of law enforcement officers in
21 the area of suicide by police? You touched on this a little
22 bit, but if you could just explain that to the jury.

23 A. Yes, I have.

24 Q. Can you explain it, please?

25 A. Quarterly I give training in suicide by police in the

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1 San Francisco crisis intervention training, and I've trained in
2 other jurisdictions as well.

3 It's a training that I wrote the curriculum for
4 myself. And the training encompasses the definition of
5 "suicide by police." A summary of relevant literature, both
6 from the medical and law enforcement communities. A discussion
7 of the psychodynamics, the reason why people choose suicide by
8 police. A discussion of the effects on all the involved
9 parties. What the case law is to date.

10 That's -- you know.

11 Q. And you mentioned you did a training at the FBI academy in
12 this area?

13 A. Correct. I was delivering a paper that I had written.

14 Q. And Sonoma County as well?

15 A. Yes.

16 Q. Now, have you published in the area of suicide by police?

17 A. Yes, that paper that I presented at the FBI academy.

18 Q. And you said you're currently engaging in another study or
19 there's a study under way?

20 A. That study has been completed by one of my fellows who
21 graduated the program, is supposed to be the primary author on
22 that. It hasn't been written up yet.

23 Q. You were a supervisor?

24 A. Yes.

25 MR. WIENER: Your Honor, don't know how -- if the

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1 Court wants me to go past 4 o'clock. I can, or now would be a
2 good time to break if the Court wants to end at 4:00 precisely.
3 I intend -- I'm happy to do it either way.

4 THE COURT: Well, if this is a breaking point, maybe
5 we should just break and let the jurors actually leave at a
6 time they've been told they would be leaving. But has rarely
7 been the time they've actually left.

8 What I'm concerned about is how much longer we're
9 going to be with the evidentiary portion of the case.

10 We have a short day tomorrow, ladies and gentlemen.

11 And to your purposes also, Dr. Keram, because I don't
12 know how long you'll be on the stand, because we have a
13 criminal case calendar tomorrow afternoon of considerable
14 length, actually. We're going to proceed from about 9:00 to
15 2:00, I would say, which is with a couple of 15-minute or so
16 breaks. I don't know how much we'll get through tomorrow. But
17 hopefully without too many interruptions if we can.

18 Ladies and gentlemen, we're getting close. I'm going
19 to try and get another update from counsel. In the meantime,
20 thank you very much for your attention. We'll see you tomorrow
21 at our regular time, 9 o'clock. Slightly different schedule,
22 however, after that.

23 (The jury exited the courtroom)

24 THE COURT: Dr. Keram, you may step down.

25 Will you be calling other witnesses after Dr. Keram?

1 MR. WIENER: Don Cameron.

2 THE COURT: How long do you anticipate that witness
3 will be?

4 MR. WIENER: Including Mr. -- Mr. Loeb's can answer
5 that.

6 MR. LOEB'S: Mr. Cameron? Probably a couple of hours.

7 THE COURT: On direct?

8 MR. LOEB'S: I'm just thinking of my total time in
9 terms of direct, and then any redirect, I was thinking about
10 the two hours.

11 THE COURT: Well, I don't see how we're going to
12 finish our case tomorrow. That's for sure. As to the
13 defendants' case. And that means we are not going to be able
14 to complete this trial in the week that we told the jury we
15 would be completing it.

16 Miss Lucero's been keeping time and she's gotten a
17 much greater number of hours than I had understood, and so
18 somewhere I've lost count. If you have been keeping some kind
19 of a rough tally at your respective tables, I'd like her to
20 tell you so you have some idea of how much time you have left,
21 regardless of what you think you have left to use.

22 For the plaintiff?

23 DEPUTY CLERK: 47 hours and 49 minutes.

24 And defendants are at 50 hours, 50 minutes.

25 MR. WIENER: Five-oh, one-five?

1 THE COURT: Five-oh, five-oh.

2 MR. WIENER: We have 50 hours and 9 minutes for us.

3 THE COURT: Okay. I don't know what the discrepancy
4 is or what gives rise to it. In my instance -- let's see, we
5 just broke at 4:00. So just a second. Let me see. As I say,
6 I haven't been tallying up quite the number -- somewhere along
7 the way I'm behind both of you. So obviously my record is not
8 correct.

9 MR. WIENER: Our numbers did sync with Miss Lucero's
10 about a week ago. They were exact.

11 THE COURT: Mine was syncing pretty close. Let me
12 check here.

13 MS. BERNSTEIN: We have no -- no time on Monday. And
14 we used a little more than two hours today.

15 THE COURT: About 2-10. Something like that.

16 MR. WIENER: Which should put it a little other 50.

17 THE COURT: Actually, somewhere I've lost you. So I
18 was going along with Miss Lucero, but somewhere I strayed off
19 the track. The difference that you have, you have 50 hours 9
20 minutes, so you're about 40 minutes off?

21 MS. BERNSTEIN: Yes.

22 THE COURT: And that's a significant amount of time.
23 I can say that I ordinarily would be relying on Miss Lucero.
24 I'm not sure if she's kept something running that you cut off.
25 There was one time when there was a lengthy objection that we

1 did not stop the clock. I do not know if you were always
2 stopping when we went in-camera. We did not always do that.
3 That may be the 30 minutes or so differential.

4 If it looked like someone was really wasting our time,
5 I kept the clock running. Beg your pardon?

6 MS. BERNSTEIN: Do you recall what date that might be?
7 We were in sync as of Thursday and we used no time Monday. So
8 unless it was today --

9 THE COURT: No, it wasn't today.

10 MS. BERNSTEIN: Then I don't see how we could have
11 gotten off.

12 MR. GALIPO: Related to Exhibit 184 and 185, if I
13 recall.

14 MR. WIENER: Which would have been Mr. Galipo's.

15 THE COURT: That would have been yesterday.

16 MR. GALIPO: That's how my time got so big.

17 THE COURT: But that would have been yesterday. You
18 say you were together with her yesterday?

19 MR. WIENER: As of Thursday, end of today?

20 THE COURT: No, no, no. Thursday.

21 MS. BERNSTEIN: We used no time yesterday, your Honor.

22 THE COURT: Well, we did have the objection to 184,
23 185, but I'm not sure.

24 MR. WIENER: That was Mr. Galipo's time.

25 THE COURT: But then the objection was made, and I

1 don't know what happened at that point.

2 MR. GALIPO: I didn't make the objection.

3 THE COURT: He didn't make the objection, and I don't
4 know if that was the one I was thinking about, in any event.
5 But I can tell you that in all likelihood I'm going to stay
6 with the Court clerk and that there has been an awful lot of
7 time spent with Mr. Jason, well beyond maybe what you had
8 anticipated.

9 If we can go through it and look through it, and if
10 you want to talk to Miss Lucero about how you calculated, Miss
11 Bernstein, to see -- she has an accurate calculator of the
12 time, it's only a question of whether she punches it in or
13 stops it at a certain point. So you felt that you were
14 together as of the end of last week?

15 MS. BERNSTEIN: Yes, your Honor.

16 THE COURT: And that you did not understand that you
17 used any time on Monday?

18 MS. BERNSTEIN: That's correct.

19 THE COURT: And that's true. No witnesses were called
20 or examined by the defendants on Monday. So I'm not sure where
21 that went, but I'll leave you to consult with her and see. As
22 I say, it's 30 minutes. I wouldn't try to cut it down to the
23 exact wire no matter what you do. Okay?

24 And as far as you're concerned, Mr. Galipo, has anyone
25 been keeping track of your hours with you, even Ms. Boyd or

1 anyone?

2 MR. GALIPO: We've been trying. I thought -- well, I
3 trust Miss Lucero, whatever she's doing. I didn't realize I
4 got that high. But I spent a lot of time with Mr. Jason, so
5 that probably explains it.

6 THE COURT: As I say, I've lost the groove here
7 somewhere along the way.

8 Okay. So -- but I'm very concerned. We're going to
9 tell these people they have to come back on Monday. Unless we
10 can use Friday in some fashion. And if they were available on
11 Friday. And even then it's not going to be really too good.
12 So --

13 MR. GALIPO: I myself --

14 THE COURT: -- I'm not happy about that.

15 MR. GALIPO: I myself obviously would be available
16 Friday, and I'm hoping that my cross-examination of both
17 experts will be an hour and a half or less. Now I don't know
18 why, where that leaves us. I don't know how long the direct's
19 going to be. But I just have to wait and see.

20 THE COURT: They're proposing a very lengthy direct.
21 At least on Dr. Keram. You've got three hours right there.
22 The way we've been going, we've hardly gotten four-and-a-half
23 hours out of some of these days. So I'll -- I don't see it
24 wrapping up this week.

25 So as I say, I'm not happy about it.

1 A lot of time has been spent essentially repeating
2 matters. I'm not attributing those repeated matters to one or
3 the other of you at this point. It's just a lot going over the
4 same old thing.

5 Particularly with Mr. Jason.

6 So, at this stage, I think we're going to tell the
7 jurors counsel aren't going to finish this week. In all
8 likelihood. Because we have tomorrow, that's going to take as
9 long as it takes. And even if you were through tomorrow, which
10 I don't envision, when are arguments going to be conducted? So
11 I'm going to finish the instruction conference this afternoon,
12 and then we'll determine how we're going to proceed. If it
13 were possible to argue and instruct on Friday, they could at
14 least go out and maybe they could then deliberate on Monday as
15 needed. But....

16 MR. GALIPO: I think that should be our goal at least.

17 THE COURT: But I can tell you I don't even think
18 that's going to work. We have our regular calendar on Friday
19 morning. So we couldn't do it anyway until late in the game on
20 Friday. So that really doesn't work. I think you're talking
21 about Monday, and our commitment to these people has been
22 broken.

23 Okay. We'll go off the record and we'll finish up the
24 instructions, and that will be it for the day.

25 (Adjourned to September 19, 2007 @ 9:00 a.m.)

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DEFENDANT EXHIBITS

Exhibit No.	Received
B6-54	4212
W-14 and W-15	4220
V5-02(a) and V5-02(b)	4286
F-9	4291
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PLAINTIFF EXHIBITS

Exhibit No.	Received
193	4207

CERTIFICATE OF REPORTER

I, Connie Kuhl, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in Case No. C 04-5459 (MMC), Marylon Boyd, et al., City and County of San Francisco, et al., were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.



Connie Kuhl, RMR, CRR

Thursday, December 20, 2007